EXPUNGEMENT OF JUVENILE RECORDS

EXPUNGEMENT OF JUVENILE RECORDS

Barbara LaBelle
Management Information Section
Quality Assurance Division
S. C. Department of Youth Services
February, 1981

Introduction

Almost every state has a law which prohibits public access to juvenile court records. These laws, however, generally have not accomplished their purpose of preventing employers, schools, social agencies, etc., from relying on juvenile records. As a result, there is an increasing trend in the promulgation of statutes designed to further implement the general policy of nonaccess to records. Variously called sealing or expungement laws, these statutes either establish a mechanism for closing records (sealing) or destroying records (expungement). Thus, while the preservation of the confidentiality of juvenile records holds some limited protection for the juvenile, expungement of juvenile records offers to the juveniles the only true protection from the effects of his record. Perhaps because sealing of a record provides minimal added protection when the state policy already has been to limit public access to records, many states also have provided for the destruction of records under certain circumstances. If the juvenile is to be rehabilitated and is to become an active and productive member of society it is important that at some point his juvenile records be expunged.

Such laws are now well accepted in the context of juvenile courts, even though many juvenile courts still do not conform, based on the parens patriae concept that the judge needs all information available in the broad court discretion for decisions regarding a youth's rehabilitation. Thus, even in

states with expungement laws, the judges' power to expunge is generally discretionary rather than mandatory. The popular notion that juveniles do not have a "court record" after juvenile court processing is not supported by the contrary evidence that seldom does expunction occur regardless of the circumstances.

On a federal level, regulations are only directed in general to retention of information of records for three years[1] and in reference to computerized records "the destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the cirminal history record information".[2] The previously cited regulations also mandate that in regard to Criminal Justice Information Systems, insofar as nonconviction data is concerned, any state statute or order such as a state Public Record law may be interpreted by a state to require which information is available to the public.[3] Accordingly, in South Carolina, the Public Records Act of 1973 states in part

> "... Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this act, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public; *provided*, however, if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, and, *provided*, further, that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of this act for the disposal of public records."

---

[1]"Records for nonexpendable property acquired with Federal funds shall be retained for three years after its final disposition." Federal Circular No. A-102 Retention and Custodial Requirements for Records, Section b, reprinted in the Federal Register, Sept. 12, 1977, p. 45829.

[2]Department of Justice, Criminal Justice Information Systems, Sec. 20.21 (f) (3) (A) (iii), reprinted in the Federal Register, March 19, 1976, p. 11715.

[3]Ibid., Introduction to Regulations (see also Commentary on this Section in Appendix).

In addition, the federal EDGAR (Education Division General Administrative Regulations) mandate retention of education records for five years while special education regulations applicable to maintaining compliance with Public Law 94-142 (Handicapped Act) state in Destruction of Data:

> "The LEA/SOP has developed policies/procedures relative to destruction of data which include the following:
>
> 1. The LEA/SOP shall inform parents when personally indentifiable information collected, maintained, or used is no longer needed to provide educational services to the child and apprise them of their right to have this information destroyed.
>
> 2. Personally identifiable information maintained on a handicapped child may be retained permanently, unless the parents request that it be destroyed.
>
> 3. Personally identifiable information must be destroyed at the request of parents (except that the student's name, address, phone number, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation).
>
> 4. Forty-five (45) days prior to destruction of any personally identifiable information, the parents shall be notified that they have the right to request and be provided a copy of any data."

It also appears that certain medical records need to maintained for a period of time since liability statutes expire only seven years after age of majority (21).

Current Standards

The standards promulgated by the American Correctional Association barely address the issue of expunction of juvenile records. Standard 9142 covers generally case record management and states "written policy and procedure govern case record management and include, but are not limited to, the establishment, utilization, content, privacy, security, preservation and timely destruction of case records. These policies and procedures are reviewed annually (essential)." No discussion on expunction follows.

The standards issued by the American Bar Association/Institute of Judicial Administration relating to Juvenile Records and Information Systems, offer more guidance. The Commentary on Part XVII: Destruction of Juvenile Records states "There is a need to have laws which do more than declare a policy of non-access and the problems with existing laws can be reduced by improved and more comprehensive legislation. The real question, therefore, is not whether there should be sealing and expungement provisions; rather, it is what provisions are most likely to ensure that a jurisdiction's policy of nonaccess is efficiently and fairly executed." In the choice between protecting history and reducing the risk of stigma caused by disclosure, it is apparent that the instances in which a juvenile will want an old record for his benefit are minimal and the risk of improper disclosure that arises whenever records are retained outweighs the benefits of retention in the few cases in which such records could be useful. Thus, Standard 5.8 below addresses Juvenile Agencies in general with reference to "Destruction of Records"

5.8 A. The rules and regulations of a juvenile agency should provide for the periodic destruction of its juvenile records based upon appropriate criteria such as: the death of the subject of the record, the age of the record, the likelihood that the record will not be useful to the Agency or the juvenile in the future and the benefits to be derived from retaining the record are outweighed by the risk that its further retention may cause harm to the juvenile if it is improperly disseminated.

B. Whenever possible, a juvenile Agency should provide an opportunity to the juvenile who is the subject of the record to obtain a copy of the record before it is destroyed if further retention of the record by the juvenile might be useful.

Standards 17.1-17.7 relate to juvenile court records in particular and are summarized below. These complete standards and commentary are included in Appendix C.

17.1 General policy recommending juvenile courts to destroy all unnecessary identifying records to protect the juvenile.

17.2 Provisions for the automatic and mandatory destruction of court records in a delinquency case if the juvenile is not adjudicated delinquent.

17.3 Provisions for the automatic destruction of juvenile records in cases in which there has been an adjudication of delinquency with the stipulation of the following four criteria to be met:

a. no new charged have been filed
b. the juvenile is no longer under supervision of the court
c. the juvenile has been released from court supervision for two years
d. the juvenile was not adjudicated delinquent for committing what would be constitute a felony offense for an adult

17.4 Relevant to neglect petitions

17.5 Provisions for requiring the juvenile court to notify the appropriate agencies that a juvenile's record has been destroyed, subsequent to which, that agency is required to destroy its references to the juvenile's records.

17.6 Provisions for providing notice to the juvenile of impending destruction of his record so he may obtain a copy if so desired.

17.7 Provisions for declaring that once the juvenile record is destroyed by the court the proceedings "should be deemed to have never occurred" and may be so stated by the juvenile to any inquirers, except if called as a witness in any criminal or delinquency case where he may be ordered to testify with respect to matters relating to that history.

The recent Standards for the Administration of Juvenile Justice as promulgated by the National Advisory Committee for Juvenile Justice and Delinquency Prevention

(July 1980) basically support the forementioned expungement position of the ABA/IJA on Destruction of Records (1.56, see Appendix D), although the waiting period varies somewhat in that a five year period is recommended rather than the ABA/IJA two years, if no charges are pending.

States' Expunction Laws

Previous standards have been incorporated into many of the various laws that states have enacted regarding expungement. Legislative drafters are also beginning to recognize a need for automatic expungement of records when the child reaches majority or if the juvenile court proceedings are terminated without adjudication, although only two states, Montana and Alaska have passed such laws currently. The literature reveals that statutes which rely on the filing of a petition for sealing and expunction are rarely utilized and thus, the destruction of a record should be mandatory and not contingent upon the receipt of a request by the subject of that record. Only automatic expungement offers the advantage of minimizing discrimnatory side effects and advances the juvenile court goal of rehabilitation with stigmatization. This conclusion also is based upon the National Advisory Committees premise that "records arising from an adjudication of delinquency are of little relevance if the subject of those records has stayed out of trouble for five years . . . or that information which is over five years old will be of only peripheral value."

The following is a summary of the various states' expunction legislation as detailed by Table I and II.

EXPUNCTION PROVISIONS - SUMMARY

I. Number

Thirty-three states plus D.C. have some expungement provisions for juvenile records in their state juvenile codes.

II. Type of Expungement

A. Eight states - only refer to expungement
B. Ten states - only have sealing
C. Eleven states - only have destruction
D. Five states - have sealing and destruction

III. Age of Jurisdiction

A. Twenty-seven states - through seventeen
B. Five states - through sixteen
C. Two states - through fifteen

IV. Age Utilized Reference Expungement

Eleven states refer to age in their juvenile codes regarding expungement.

A. Nine states - age of jurisdiction, seventeen
    1. Six - eighteen, expungement
    2. Two - nineteen, expungement
    3. One - twenty-one, expungement
B. One state - age of jurisdiction sixteen, age expungement seventeen.
C. One state - age of jurisdiction fifteen, age expungement, sixteen

V. Time Lapse After Jurisdiction Terminated

Twenty-eight states utilize waiting before records may be expunged. For those states utilizing both sealing and destruction, different waiting periods are usually specified. The shorter time lapses are usually for sealing.

A. Fifteen - two years
B. Four - five years
C. Two - two years after adjudication
D. Two - anytime at court discretion
E. One - three years
F. One - three years after adjudication, if under eighteen
G. One - thirty days after eighteenth birthday

H. One - ten years, destroy
I. One - five years, destroy
J. One - after release from jurisdiction
K. One - one year,seal
L. One - ten years after sealing, destroy
M. Four - five years after majority, destroy

VI. On Motion By

A. Child or court - fourteen
B. Child - seven
C. Court - seven
D. Court, child, juvenile agency or interested party - six

VII. Provision For Clear Record

Twenty-three states have provisions that the juvenile's record must be clear, except traffic.

VIII. Provision for Rehabilitation

Twelve states specify that the juvenile must have demonstrated to the court that he has been satisfactorily rehabilitated.

IX. Mandate

A. The expungement laws are discretionary in thirty-two states, only acted upon by motion or petition.
B. Two states (Alaska and Montana) mandate records must be expunged at some point.

X. Other Provisions

Various other provisions exist in some of the states expungement laws for juveniles

A. Four states - preserve felony or violent crime records.
B. Two states - no waiting period if joining the military.
C. Two states - photocopy court orders and decrees before destruction.
D. Two states - court discretion anytime.
E. One state - court must review record at age twenty-one and destroy, if appropriate.

TABLE I

STATES' EXPUNCTION PROVISIONS

STATE	SEAL	TYPE DEST.	TYPE EXP.	AGE OF JURIS.	AGE EXPUNGE	TIME LAPSE AFTER TERM. OF JURIS.	MOTION BY WHOM	RECORD CLEAR	REHAB.	MANDATE MAND.	MANDATE DISCRE.	OTHER
Alabama	X	X		15		2 yrs.-seal, 5 yrs. after majority-destroy	Child	X			X	
Alaska	X			17	18	30 days or court relinquishing custody	Court			X		
Arizona		X		17	18-23		Court or Child	X			X	
California		X		17	18	5 yrs.	Child				X	Photocopies before destruct.
Colorado			X	17		2 yrs.	Child,Ct: Prob. Dept.				X	
Connecticut		X		15	16	2 yrs.	Child	X			X	
Delaware			X	17	18	3 yrs. from adj. if under 18	Child	X			X	1. Maintain file if murder, arson burglary 2. No wait if join military
District of Columbia	X			17		2 yrs.	Court or Child	X			X	
Florida		X		17	19	5 years after last entry	court	X			X	

STATE	SEAL	TYPE DEST.	TYPE EXP.	AGE OF JURIS.	AGE EXPUNGE	TIME LAPSE AFTER TERM. OF JURIS.	MOTION BY WHOM	RECORD CLEAR	REHAB.	MANDATE MAND.	MANDATE DISCRE.	OTHER
Georgia	X	X		16		2 yrs.-sealed, 10 yrs. Destroyed	Court or Child	X	X		X	
Idaho			X	17	18	5 yrs. or 5 yrs. after uncond. release	Child	X	X		X	
Indiana		X		17		Anytime	Interested Party	X	X		X	Complete Court discretion with all factors considered
Kansas			X	17			Discretion of Judge				X	
Kentucky			X	17		2 yrs. or 2 yrs. after uncond. release	Child or Prob. Agency				X	
Louisiana		X		16		5 yrs.	Child or Court	X	X		X	Preserve violent crimes file
Maryland	X			17	21		Court or Good Cause				X	
Missouri	X			16	17	After termination	Child, Court or Juven. Officer				X	
Montana	X	X		17	18	Released-sealed, 10 yrs. from sealing, destroy	Court			X		
Nebraska			X	17		Set aside adjudication	Interested Party	X	X		X	
Nevada	X			17		3 yrs.	Court, Child or Prob. Off.	X	X		X	
New Jersey	X			17		2 yrs. after adjud.	Child or Court	X			X	1. No Expungement of violent crim. records. 2. No wait if join military

STATE	SEAL	TYPE DEST.	EXP.	AGE OF JURIS.	AGE EXPUNGE	TIME LAPSE AFTER TERM. OF JURIS.	MOTION BY WHOM	RECORD CLEAR	REHAB.	MANDATE MAND.	MANDATE DISCRE.	OTHER
New Mexico	X			17		2 yrs.	Child or Court	X			X	
North Dakota	X			17		2 yrs. since final discharge	Child or Court	X	X		X	
Ohio			X	17		2 yrs.	Child or Court		X		X	
Oklahoma		X		17		5 yrs. after majority	Child, Court or Prob. Off.	X			X	
Oregon		X		17		2 yrs.	Child or Court	X			X	Court must review at 21 and order destruc., if appropriate
Rhode Island		X		17			Court				X	Deemed inactive and not worth preserving
South Dakota	X			17		2 yrs.	Child	X	X		X	
Texas	X			16		2 yrs.	Child or Court	X			X	
Utah	X	X		17		1 yrs.-seal, 5 yrs after 21 birthday destroy	Child or Court	X	X		X	Preserve on microfilm, court orders and decrees
Vermont	X			15		2 years after discharge	Child	X	X		X	
Virginia		X		17	21+	5 years	Court				X	
Washington	X	X		17		2 yrs. seal; 5 yrs.	Child or Court	X			X	Preserve felony files
Wyoming			X	19			Child or Court	X	X		X	

Table II

STATES WITH NO EXPUNCTION PROVISIONS

1. Arkansas
2. Hawaii
3. Illinois
4. Iowa
5. Maine
6. Massachusetts
7. Michigan
8. Minnesota
9. Mississippi
10. New Hampshire
11. New York
12 North Carolina
13. Pennsylvania
14. South Carolina
15. Tennessee (only fingerprints)
16. West Virginia
17. Wisconsin

South Carolina and DYS Current Practices

Legislatively in South Carolina, the issue of expungement of records has been addressed only in a law passed in 1973 providing that "the record of any person charged with a criminal offense be destroyed upon a finding that such person is not guilty" (Complete statute in Appendix E) although two bills introduced in the General Assembly amending this somewhat, died in the 1978 and 1979 sessions. In addition, the Public Records Act of 1973, as mentioned previously in the Introduction, gives the Department of Archives authority in regard to certain records cited "that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of this act for the disposal of public records". Further, this law not only gives the Department of Archives discretion in determining what records may be kept and related time frames, but also the responsibility of developing and implementing sound and efficient records management in state government agencies and institutions. The S.C. code states in part

> "A records management program for the application of efficient and economical management methods and the creation, utilization, maintenance, retention, preservation, and disposal of public records shall be administered by the Archives. It shall be the duty of that Department to establish standards, procedures, techniques, and schedules for effective management of public records, to make continuing surveys of paper work operation, and to recommend improvement in current management practices, including the use of space, equipment and supplies employed in creating, maintaining, and servicing records. The head of each agency, the governing body of each subdivision and every public records custodian shall cooperate with the Archives in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of the agency or subdivision."

Thus, without expungement statutes explicitly built into the Juvenile Code, the Department of Youth Services relied on the Department of Archives and History in the development of policies and procedures for the establishment and maintenance of a Central Inactive Records Section in 1977. Through an Agency task force organized for the project in conjunction with consultation and guidance from Archives according to their policies and procedures, retention schedules for Inactive Records were developed for both the Residential School case files and those of the Youth Bureau. Copies of these schedules are attached in Appendix F. Basically, these schedules directed the Agency to retain all inactive records in the following manner:

A. Residential Schools
   1. Maintain as received from schools after discharge in inactive files for five years or until juvenile attains age 18, then
   2. Purge file of all material except
      a. Court order or Commitment letters
      b. Affidavits
      c. Medical history including exams, psychiatric, hospital
      d. Parole letters or release
      e. Educational transcripts
   3. Store boxes or maintain on microfilm alphabetically for eighty years before destruction

B. Youth Bureau
   1. Maintain as received from Youth Bureaus after case terminations in inactive files for one year
   2. Transfer to State Records Center,hold for five years, destroy

The procedure as outlined above, while serving the original purpose of organizing and maintaining a Central Records Unit, has resulted in the storage at DYS of a current estimation of 35,000-40,000 records from as far back as 1925. Although microfilming was recommended by Archives, the Agency did not have the funding to do so. As additional information, the inactive records logbook indicates that for the time period of January, 1979 through December, 1980, of 183 requests for client information, only sixty were after the client was eighteen years of age and forty-two of those were by the Department of Corrections regarding commitment information.

After age twenty-one, only sixteen requests were made, again with thirteen by the Department of Corrections.

In addition, computerized histories of all youth coming under the jurisdiction of DYS have been maintained since July, 1972. These files are separated on a history update annually, removing those records of youth eighteen and over into an inactive file.

Obviously then, given the few federal regulations in regard to destruction of those public records which are confidential as cited previously, a broad area of discretion exists within which state agencies in South Carolina operate. A lengthy discussion with the appropriate personnel at the Department of Archives and History confirms this premise. In fact, within the few regulations, agency guidelines on this issue conform fairly well to whatever the agency itself deems most appropriate. As an example, one might address the retention schedule for student records of Juvenile Placement and Aftercare which calls for transferring the records to inactive status until seventeen or can't return, holding until twenty-one and then sending to the Archives Records Center for fifteen years before destruction. This contrasts markedly with the DYS previously cited retention schedule.

Summary and Conclusions

South Carolina is one of the minority of states that does not have legislation regarding the expungement of juvenile records. Those states that have such laws embody these statutes with varying criteria, differing somewhat as to method of expunction, be it sealing or destruction, waiting periods prior to destruction and in many instances behavorial guidelines related to subsequent offenses. Even with the abundance of such legislation, in only two states is the implementation of expunction mandatory, rather than dependent on petition for such action. The Juvenile Justice Standards promulgated by various groups such as ABA/IJA, ACA and

the National Advisory Committee for Juvenile Justice and Delinquency Prevention support the position that indeed such legislation is essential in preserving the goals of rehabilitation for our youth. While accurate and complete records are necessary for the effective operation of the juvenile justice system, there is a point at which the balance of information retention is outweighed by the possible risk to the individual. In addition, the literature and our own DYS follow-up research reveals that subsequent offenses usually occur within a period of 1-3 years following release, if at all.

Thus, it is time this issue is addressed in South Carolina, and legislation passed authorizing the mandatory destruction of juvenile records by the Family Court. In compliance with the majority of standards, this statute should include provisions for:

1. Waiting period of 2-5 years after discharge from jurisdiction;
2. Clear offense record (except traffic);
3. Notification to the individual ninety days prior that his record is being destroyed and he may request any portion of it;
4. Notification to all the agencies who have been concerned in the case such as law enforcement, correctional agency or social agency that their appropriate records must be destroyed (with necessary sanctions for non-compliance specified);
5. Assurance that the record or incidences involved "should be deemed never to have existed."

Presently, in lieu of such legislation, few guidelines in the area of state or federal record retention prevail for Juvenile Justice Agencies. The Public Records Act addresses the issues generally, giving the Department of Archives control and maintenance responsibilities of public records while certain federal regulations mandate record retention three years and education regulations authorize a five year retention period. Current provisions for DYS medical liability also would indicate a retention period for student medical records for seven years after the age of majority in case of legal action. Within these limitations, broad discretion is vested within the agencies themselves to establish appropriate retention

schedules. Thus, the Department of Youth Services in consultation with the Department of Archives developed its present record series retention schedules at the time of organizing a Central Inactive Records Unit. The experience of dealing with this issue over the last three or four years has made it apparent that the relevant policies and procedures need to be realigned. Not only are thousands of records accumulating, creating a serious space problem and work efforts for staff, but the philosophy upon which all the current standards are based makes it obvious that many of the present records retained are needless, duplicated in many cases, maintained too long and serve little purpose. Input from the Education, Medical and Psychology staff at DYS as well a review of the inactive records log confirm this position. In addition, these practices are not even consistent with the Juvenile Justice System since the Department of Juvenile Placement and Aftercare utilizes a differing retention schedule, and which appears to be far more appropriate.

Therefore, as a realistic alternative to expungement legislation, the Department to Youth Services should revise its policies and schedules regarding client record retention while concurrently developing internal procedures to implement these policies. Since micro filming still presents funding problems, with the approval of the Department of Archives, and based upon the input of the Medical, Education and Psychology Sections,provisions of these Agency regulations for inactive client records should include:

1. Retention of client file in respective school until student is released
2. Purging of irrelevant information from the various sections such as Education, Medical and institutions upon release of the client and prior to forwarding the record to Central Inactive Records.
3. Breaking inactive file at the end of each calendar year
4. Retention in the Inactive Record Section until student is eighteen, then
5. Screening and destroying of all folder documents except:

a. Court order or comitment letters
b. Medical record form concerning history, medical examinations and hospital records
c. Parole letters
d. Educational transcripts

6. Maintenance of purged record in storage at DYS until age 21, then
7. Notice to student that records are being transferred and date of destruction which will be automatic, in case record is wanted
8. Transferring to Archives Records Center for 15 years, then
9. Automatic destruction

*** EXCEPTION - EDUCATIONAL RECORDS

1. All educational information is maintained within the Education Section files as long as the client is active or "could be" active at DYS.
2. At "no return" status, all educational information purged except transcripts, GED certificates or trade certificates, then
3. Forwarded to Central Inactive Records
4. Maintained in separate educational file until age 60, then
5. Destroyed.

In addition, the computerized client history files should:

1. Continue to be maintained by the Data Processing Section;
2. Updated into a separate history file at age 18, at which time
3. All names as identifiers should be removed from the records which will be
4. Maintained until age 21, then,
5. Forwarded to Archives for research purposes

In this manner, more effective records management will be established within the purview of existing record retention regulations, allowing necessary information retrieval for reference purposes for a reasonable time frame while reducing the "risk" factor of overextended information retention on all clients. Further, it will provide more consistency for South Carolina Juvenile Justice records in that it adheres more closely to the broad practices of Juvenile Placement and Aftercare.

(R495, 111680)

An Act To Provide For The Administration, Retention, Preservation And Disposal Of The Public Records Of This State And Its Political Subdivisions, And To Repeal Sections 1-59 And 9-7 Through 9-11, Code Of Laws Of South Carolina, 1962, Relating To The Photogaphing Of Records For Destruction And The Destruction Of Records Of This State And Its Political Subdivisions, And To Provide Penalties.

Whereas, the public records of this State document the actions, affairs, history and life of the State which has suffered repeated loss of her records by fire, theft, neglect, and the ravages of war; and

Whereas, increasing age and volume of public records demand new attention to economical and efficient records keeping through innovative records management and means of recording; and

Whereas, additional steps are necessary to encourage the realization of the value of the priceless documentary heritage of this State and to make the public records of permanent value more accessible for public use; and

Whereas, the careful preservation and comprehensive management of public records is an essential of good government. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. For the purposes of this act "public records" means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this act, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public; *provided*, however, if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, and, *provided*, further, that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of this act for the disposal of public records.

"Agency" means any State department, agency or institution.

"Subdivision" means any political subdivision of the State.

"Archives" means the South Carolina Department of Archives and History.

"Director" means the Director of the Department of Archives and History.

SECTION 2. The official in charge of an office having public records shall be the custodian of such records and may appoint a records officer for his agency or subdivision to carry out his duties and responsibilities as set forth in this act.

SECTION 3. Any person who unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates, secretes or destroys it shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars.

SECTION 4. Any person having custody of public records shall, at the expiration of his term of office or employment, deliver to his successor, or, if there is none, to the Archives, all public records in his custody.

SECTION 5. Any person in possession of a public record who refuses or neglects within fifteen days after written request is made to him by the legal custodian of the record or by the Director of the Archives to deliver as herein required such public records to the requesting party shall be guilty of a misdemeanor and upon conviction be fined not exceeding five hundred dollars. In addition, the legal custodian of such public records or the Director of the Archives may apply by verified petition to the Court of Common Pleas in the county of residence of the person withholding the records and the Court shall upon proper showing issue orders for the return of the records to the lawful custodian or the Director of the Archives.

SECTION 6. Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person unless such records by law must be withheld, or the public interest is best served by not disclosing them, and he shall furnish, upon reasonable request and at a reasonable fee, certified copies of public records not restricted by law or withheld from use in the public interest.

SECTION 7. Public records shall be protected against deterioration, mutilation, theft, loss or destruction and shall be kept secure

in rooms having proper ventilation, or in fire-resistant safes or vaults, in such arrangement as to be easily accessible for convenient use. They shall be kept in the buildings in which they are ordinarily used except where they may be transferred for retention or disposal in accord with this act or for special public display by the appropriate authority. Records shall be copied or repaired, renovated, rebound, or restored if worn, mutilated, damaged, or difficult to read. Whenever the records of any agency or subdivision are in need of repair, restoration, or rebinding the head of such agency or subdivision may authorize that such records be removed for the length of time necessary to repair, restore or rebind them; *provided,* such restoration and rebinding preserves the records without loss or damage to them.

SECTION 8. A records management program for the application of efficient and economical management methods and the creation, utilization, maintenance, retention, preservation, and disposal of public records shall be administered by the Archives. It shall be the duty of that department to establish standards, procedures, techniques, and schedules for effective management of public records, to make continuing surveys of paper work operation, and to recommend improvement in current management practices, including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. The head of each agency, the governing body of each subdivision and every public records custodian shall cooperate with the Archives in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of the agency or subdivision.

SECTION 9. The Archives shall have the right to examine the condition of public records and shall give advice and assistance to public officials in the solutions of their problems in creating, filing, preserving, and making available the public records in their custody. When requested by the Archives, agencies and subdivisions shall assist the Archives to prepare an inclusive inventory of records in their custody and a schedule establishing a time period for the retention of each series of records. This schedule shall be approved by the governing body of the subdivision or the head of the agency having custody of the records, the Director of the Archives, and in the case of records of state or regional agencies, the State Budget and Control Board. This schedule shall serve as authorization for

the destruction of records retained for the stated time period or for the preservation of records through other means, such as transfer to the Archives.

SECTION 10. In cooperation with the head of each agency and the governing body of each subdivision, the Archives shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government, for the protection of the interests of the public and for the preservation of the State's documentary heritage. Within the limits of available funds and space, the Archives shall make preservation duplicates, or designate as preservation duplicates existing copies of such essential public records, or select certain original records for permanent preservation.

In order to make public records more available for research the Archives may honor reasonable requests for copies of public records of research value by reproducing and selling them at reasonable cost. All monies received from the sale of such copies shall be deposited with the State Treasurer to be used for making available copies of other public records of research value as determined by the Archives; *provided*, that their reproduction is not otherwise prohibited by law or withheld in the public interest.

Any public official having records in his custody may turn over to the Archives any public records no longer in current official use, and the Archives may in its discretion receive such records and provide for their proper administration, preservation, reproduction, or disposition; *provided*, that any record placed in the custody of the Archives under special terms or conditions restricting their use shall be made accessible only in accordance with such terms and conditions. Upon receipt of the records, unless otherwise prohibited by law or withheld from copying in the public interest, copies of them may be made and certified under the seal of the Archives, which certification shall have the same force and effect as if made by the official or agency which transferred them. The Archives may charge reasonable fees for such copies.

The Archives may make such rules and regulations as may be necessary to carry out the provisions of this act. Records in the custody of the Archives may be withheld from public inspection in accordance with the provisions of Act No. 1396 of 1972 and when in the opinion of the Director the public interest or private right would be impaired by public inspection or whenever the physical condition of the public records or other documents is such that they

would be damaged by handling. Any decision of the Director to withhold public records or other documents from inspection may be appealed to the Archives and History Commission whose decision shall be final.

When any public records have been destroyed or otherwise disposed of in accordance with the procedure authorized in Sections 9 and 11 of this act, any liability that the custodian of such records might incur as a result of such official action shall cease.

SECTION 11. If any public records of an agency or subdivision in the custody of the Archives prove to be of insufficient value to warrant permanent preservation, the Director, with the approval of the Archives and History Commission, may submit a statement or summary of the records or material to the State Budget and Control Board and to the agency or subdivision certifying the type and nature of the records or material and requesting approval of the destruction or disposal request. Upon receipt of such approval, the Director may destroy or dispose of the public records. If the agency or subdivision no longer exists and there is no successor agency or subdivision, the Director may destroy or otherwise dispose of the records with the approval of the Archives and History Commission and the Budget and Control Board.

SECTION 12. The Archives may execute a program of inventorying, repairing, and microfilming for security purposes the public records of the agencies and subdivisions which it determines have permanent value, and of providing safe storage of microfilm copies of such records.

SECTION 13. Any custodian of public records as defined by this act is authorized to photocopy, microfilm or reproduce on film or by electrostatic method any part of the records kept by the office concerned unless otherwise prohibited by law or withheld from reproduction in the public interest. Such copies shall be used only in equipment or systems which shall accurately reproduce and preserve the original record in all details in a durable form. Each agency or subdivision shall preserve such photocopies, electrostatic copies, or films in conveniently accessible files and shall provide for preserving, examining and using them. If the records are of permanent value to the agency or subdivision concerned or are determined to be of archival value by the Archives, one master copy of each record filmed shall meet standards approved by the Archives and be deposited there. Custodians of public records may destroy the orig-

inal records from which the photographs, microphotographs, films or electrostatic copies have been made, or any part of them; *provided,* the records are of no value to the agency concerned, and the Archives certifies that the records may be destroyed through this procedure or retention schedules approved by the Archives; *provided,* further, that the records microfilmed or reproduced and approved for destruction are reported to the Archives in such manner as it may direct.

SECTION 14. Any public official or custodian of public records who refuses or neglects to perform any duty required of him by this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars for each month of such refusal or neglect.

SECTION 15. Sections 1-59 and 9-7 through 9-11 of the 1962 Code are repealed.

SECTION 16. This act shall take effect upon approval by the Governor.

In the Senate House the 7th day of June

In the Year of Our Lord One Thousand Nine Hundred and Seventy-three.

EARLE E. MORRIS, JR.,
President of the Senate.

REX L. CARTER,
Speaker Pro Tempore of the House of Representatives.

Approved the 12th day of June, 1973.

JOHN C. WEST,
Governor.

Printer's No. 129—S.

APPENDIX B

DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE INFORMATION SYSTEMS

Federal Register-March 19, 1976

federal register

FRIDAY, MARCH 19, 1976

PART III:

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

CRIMINAL HISTORY RECORDS

Collection, Storage, and Dissemination of Information

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

On May 20, 1975, regulations were published in the FEDERAL REGISTER (40 FR 22114) relating to the collection, storage, and dissemination of criminal history record information. Amendments to these regulations were proposed October 24, 1975 (40 FR 49789) based upon a re-evaluation of the dedication requirement contained in § 20.21(f). Hearings on the proposed changes were held November 17, 18, 21 and December 4, 1975. In addition, hearings were held to consider changes to the dissemination provisions of the regulations (40 FR 52846). These hearings were held December 11, 12 and 15, 1975, to consider comments from interested parties on the limitations placed on dissemination of criminal history record information to non-criminal justice agencies. The purpose of the hearings was to determine whether the regulations, as they were drafted, appropriately made the balance between the public's right to know such information with the individual's right of privacy.

As a result of these hearings modifications to the regulations have now been made to better draw this balance. The regulations are based upon section 524 (b) of the Crime Control Act of 1973 which provides in relevant part:

"All criminal history information collected, stored or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction."

The regulations, as now amended, provide that conviction data may be disseminated without limitation; that criminal history record information relating to the offense for which an individual is currently within the criminal justice system may be disseminated without limitations. Insofar as nonconviction record information is concerned (nonconviction data is defined in § 20.20(k)), the regulations require that after December 31, 1977, most non-criminal justice access would require authorization pursuant to a statute, ordinance, executive order or court rule, decision or order. The regulations no longer require express authority, that is specific language in the authorizing statute or order requiring access to such information, but only that such dissemination is pursuant to and can be construed from the general requirement in the statute or order. Such statutes include State public record laws which have been interpreted by a State to require that criminal history record information, including nonconviction information, be made available to the public. Determinations as to the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order will be made by the appropriate State or local officials. The deadline of December 31, 1977, will permit States to obtain the authority, as they believe necessary, to disseminate nonconviction data.

The regulations, as now amended, remove the prohibition that criminal history record information in court records of public judicial proceedings can only be accessed on a chronological basis. § 20.20(b)(3) deletes the words "compiled chronologically". Therefore, court records of public judicial proceedings whether accessed on a chronological basis or on an alphabetical basis are not covered by the regulations.

In addition, the regulations would not prohibit the dissemination of criminal history record information for purposes of international travel (issuance of visas and granting of citizenship). The commentary on selected portions of the regulations have been amended to conform to the changes.

Pursuant to the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (42 U.S.C. 3701 *et seq.*) (Aug. 6, 1973), these amendments to Chapter I of Title 28 of the Code of Federal Regulations are hereby adopted to become final on April 19, 1976. These amendments only amend subparts A and B. Subpart C remains the same.

Subpart A—General Provisions

Subpart B—State and Local Criminal History Record Information Systems

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

AUTHORITY: Pub. L. 93-83, 87 Stat. 197 (42 USC 3701, *et seq.* 28 USC 534), Pub. L. 92-544, 86 Stat. 1115.

Subpart A—General Provisions

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to insure the completeness, integrity, accuracy and security of such information and to protect individual privacy.

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 USC 3701, *et seq.* (Act), 28 USC 534, and Pub. L. 92-544, 86 Stat. 1115.

§ 20.3 Definitions.

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(c) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to com-

mence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to instanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(f) "Statute" means an Act of Congress or State legislature of a provision of the Constitution of the United States or of a State.

(g) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) An "executive order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 USC 3701, *et seq.*, as amended.

(j) "Department of Justice criminal history record information system" means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.

(k) "Nonconviction data" means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(l) "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

Subpart B—State and Local Criminal History Record Information Systems

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in Subpart C.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings; (4) published court or administrative opinions or public judicial, administrative or legislative proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section. The regulations do not prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

§ 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to LEAA by each State on March 16, 1976, to set forth all operational procedures, except those portions relating to dissemination and security. A supplemental plan covering these portions shall be submitted no later than 90 days after promulgation of these amended regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

(2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* By December 31, 1977, insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof.

These dissemination limitations do not apply to conviction data.

(c) *General policies on use and dissemination.* (1) Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.

(2) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

(3) Subsection (b) does not mandate dissemination of criminal history record information to any agency or individual. States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order.

(d) *Juvenile records.* Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to non-criminal justice agencies is prohibited, unless a statute, court order, rule or court decision specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in § 20.21(b) (3) and (4).

(e) *Audit.* Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated. The reporting of a criminal justice transaction to a State, local or Federal repository is not a dissemination of information.

(f) *Security.* Wherever criminal history record information is collected, stored, or disseminated, each State shall insure that the following requirements are satisfied by security standards established by State legislation, or in the absence of such legislation, by regulations approved or issued by the Governor of the State.

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3) (A) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(i) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(ii) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(iii) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(iv) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.

(v) The programs specified in (ii) and (iv) of this subsection are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.

(vi) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for *A* the physical security of criminal history record information under its control or in its custody and *B* the protection of such information from unauthorized access, disclosure or dissemination.

(vii) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(B) A criminal justice agency shall have the right to audit, monitor and inspect procedures established above.

(4) The criminal justice agency will:

(A) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(B) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(C) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for (i) the physical security of criminal history record information under its control or in its custody and (ii) the protection of such information from unauthorized access, disclosure, or dissemination.

(D) Institute procedures, where computer processing is not utilized, to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(E) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity, be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

§ 20.22 Certification of Compliance.

(a) Each State to which these regulations are applicable shall with the submission of its plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under § 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth categories of non-criminal justice dissemination. See § 20.21(b).

§ 20.23 Documentation: Approval by LEAA.

Within 90 days of the receipt of the plan, LEAA shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by LEAA will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by December 31, 1977. A final certification shall be submitted in December 1977.

§ 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a fine not to exceed $10,000. In addition, LEAA may initiate fund cut-off procedures against recipients of LEAA assistance.

RICHARD W. VELDE,
Administrator.

APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMIAL HISTORY RECORD INFORMATION SYSTEMS

Subpart A—§ 20.3(b). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(c). The definitions of criminal justice agency and administration of criminal justice of 20.3(c) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

§ 20.3(e). Disposition is a key concept in section 524(b) of the Act and in 20.21(a)(1) and 20.21(b). It, therefore, is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.

§ 20.3(k). The different kinds of acquittals and dismissals as delineated in 20.3(e) are all considered examples of nonconviction data.

Subpart B—§ 20.20(a). These regulations apply to criminal justice agencies receiving funds under the Omnibus Crime Control and Safe Streets Act for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulation of manual systems, therefore, is authorized by section 524(b) when coupled with section 501 of the Act which authorizes the Administration to establish rules and regulations "necessary to the exercise of its functions * * *."

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

Limitations as contained in Subpart C also apply to information obtained from the FBI Identification Division or the FBI/NCIC System.

§ 20.20 (b) and (c). Section 20.20 (b) and (c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know. Court records of public judicial proceedings are also exempt from the provisions of the regulations.

Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, annnoucements of arrest, convictions, new developments in the course of an investigation may be made. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1975" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal justice agency may respond to the inquiry. Conviction data as stated in 20.21(b) may be disseminated without limitation.

§ 20.21. The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor. The State has 90 days from the publication of these revised regulations to submit the portion of the plan covering 20.21(b) and 20.21(f).

§ 20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies outside of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to a statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.20(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most non-criminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§ 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

The regulations distinguish between conviction and nonconviction information insofar as dissemination is concerned. Conviction information is currently made available without limitation in many jurisdictions. Under these regulations, conviction data and pending charges could continue to be disseminated routinely. No statute, ordinance, executive order, or court rule is necessary in order to authorize dissemination of conviction data. However, nothing in the regulations shall be construed to negate a State law limiting such dissemination.

After December 31, 1977, dissemination of nonconviction data would be allowed, if authorized by a statute, ordinance, executive order, or court rule, decision, or order. The December 31, 1977, deadline allows the States time to review and determine the kinds of dissemination for non-criminal justice purposes to be authorized. When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State. It is possible for a public record law which has been construed by the State to authorize access to the public of all State records, including criminal history record information, to be considered as statutory authority under this subsection. Federal legislation and executive orders can also authorize dissemination and would be relevant authority.

For example, Civil Service suitability investigations are conducted under Executive Order 10450. This is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

§ 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for research purposes. As with the agencies designated in § 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically "certification" criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

> "Except as provided by Federal law other than this title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings."

LEAA anticipates issuing regulations pursuant to Section 524(a) as soon as possible.

§ 20.21(c)(2). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(3). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished. The State could, on the other hand, enact laws authorizing any member of the private sector to have access to nonconviction data.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language of a statute or court order, rule, or court decision specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(e). Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies. Although this subsection requires that there be records kept with the names of all persons or agencies to whom information is disseminated, criminal justice agencies are not required to maintain dissemination logs for "no record" responses.

§ 20.21(f). Requirements are set forth which the States must meet in order to assure that criminal history record information is adequately protected. Automated systems may operate in shared environments and the regulations require certain minimum assurances.

§ 20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that States ought to be free to determine other means of identity verification.

§ 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under 20.21(e) must be kept so that notification can be made.

§ 20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history record information and does not include other information such as intelligence or treatment data.

§ 20.22(a). The purpose for the certification requirement is to indicate the extent of compliance with these regulations. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Reports No. 2 and No. 13; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum No. 3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum No. 4.

[FR Doc.76-7889 Filed 3-18-76;8:45 am]

APPENDIX C

JUVENILE JUSTICE STANDARDS
JUVENILE RECORDS AND INFORMATION
PART XVII: DESTRUCTION SYSTEMS OF JUVENILE RECORDS

Institute of Judicial Administration
American Bar Association

cation forms), this standard should be invoked infrequently. Nonetheless, the standard is included as an added measure of protection against improper access. The standard does not prohibit the juvenile from disclosing information to any other person; it only precludes juvenile courts from disclosing information to unauthorized persons, at the request of the juvenile, except as provided in Standard 15.4 E. 2.

15.8 Nondisclosure agreement.

Any person, other than the juvenile who is the subject of a juvenile record, his or her parents, and his or her attorney, to whom a juvenile record or information from a juvenile record is to be disclosed, should be required to execute a nondisclosure agreement in which the person should certify that he or she is familiar with the applicable disclosure provisions and promise not to disclose any information to an unauthorized person.

Commentary

The purpose of nondisclosure agreements is discussed in the commentary to Standards 5.4 G. and 20.4.

PART XVI: CORRECTION OF JUVENILE RECORDS

16.1 Rules providing for the correction of juvenile records.

Rules and regulations should be promulgated which provide a procedure by which a juvenile, or his or her representative, may challenge the correctness of a record and which further provide for notice of the availability of such a procedure to be given to each juvenile who is the subject of a record.

Commentary

This standard is based upon Standard 2.6. The precedent and reasons for providing a mechanism for correcting records is discussed in the commentary to Standard 2.6.

PART XVII: DESTRUCTION OF JUVENILE RECORDS

17.1 General policy.

It should be the policy of juvenile courts to destroy all unnecessary information contained in records that identify the juvenile who is the subject of a juvenile record so that a juvenile is protected from the possible adverse consequences that may result from disclosure of his or her record to third persons.

Commentary

Almost every state has a law which prohibits public access to juvenile court records. Gough, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status," 1966 *Wash. U. L. Q.* 147, 169 (hereafter, "A Problem of Status"). These laws, however, have not generally accomplished their purpose of preventing employers, schools, social agencies, etc., from relying on juvenile records. *Id.* at 170-74; Altman, "Juvenile Information Systems: A Comparative Analysis," 24 *Juv. Justice* No. 4, 1, 4 (1974) (hereafter, "Juvenile Information Systems"). As a result, thirty states have already promulgated statutes designed to implement further the general policy of nonaccess to records. Variously called sealing or expungement laws, these statutes either establish a mechanism for closing records (sealing) or destroying records (expungement). Perhaps because sealing a record provides minimal added protection when the state policy already has been to limit public access to records, nineteen states have also provided for the destruction of records under certain circumstances. These statutes vary considerably: Connecticut (Conn. Gen. Stat. Ann. § 17-72a) provides for mandatory destruction; in California (Welf. and Inst. Code § 781), destruction is left to the discretion of the court; and New Jersey (N.J. Code ch. 2A § 4-39.1) excludes certain serious crimes from its general destruction provisions. (Compare, 18 U.S.C. § 5038, providing for sealing and not destruction.)

While some commentators have criticized sealing and expungement laws—see, Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," 61 *J. Crim. L.C. & P.S.* 378 (1970)—such laws are now well accepted in the context of juvenile courts. There is a need to have laws which do more than declare a policy of nonaccess (Gough, "A Problem of Status," *supra* at 170); and the problems with existing laws can be reduced by improved and more comprehensive legislation. See commentary to Standard 5.8. The real question, therefore, is not whether there should be sealing and expungement provisions; rather, it is what provisions are most likely to ensure that a jurisdiction's policy of nonaccess is efficiently and fairly executed.

The choice between sealing (which means securing a record in a manner to ensure nondisclosure while preserving the record itself) and destruction (which means at a minimum destroying all personal identifiers in the record and at a maximum destroying the entire record) is a choice between protecting history and reducing the risk of stigma caused by disclosure to the lowest level. Many of the arguments against destruction are discussed in the commentary to Stan-

dard 5.8. Another argument made in support of sealing is that there are some instances when the juvenile may want the actual historical record to use for his or her own benefit. For example, if a juvenile is charged with a notorious crime that receives a lot of publicity, destroying the record may not destroy memories and the juvenile may want the actual record to prove that he or she was found not guilty of the crime charged. The argument for destruction acknowledges that destruction brings with it the inevitable hard case where the juvenile will not be able to reconstruct history by relying upon the actual record. However, in favor of destruction, it is argued that, historically, juvenile courts were always supposed to keep their records private, but somehow they have managed to "leak" to employers, credit companies, etc. H. Miller, *The Closed Door* (1972); See also *In re Gault*, 387 U.S. 1, 24-25 (1967). Moreover, the instances in which a juvenile will want to use an old record for his or her benefit are minimal, and the risk of improper disclosure that arises whenever records are retained outweighs the benefits of retention in the few cases in which such records could be useful. Moreover, if a person wants a copy of his or her record for his or her own purposes, he or she should be given a copy before it is destroyed. See Standards 5.8 B. and 17.6 A.

17.2 Cases terminating prior to adjudication of delinquency.

In cases involving a delinquency complaint, all identifying records pertaining to the matter should be destroyed when:

A. the application for the complaint is denied;

B. the complaint or petition is dismissed; or

C. the juvenile is adjudicated not delinquent.

Commentary

This standard provides for the automatic and mandatory destruction of court records in a delinquency case if the juvenile is not adjudicated delinquent. The standard is modeled upon Conn. Laws § 17-72a (1969), which provides: "Whenever a child is dismissed as not delinquent, all police and court records pertaining to such charge shall be ordered erased immediately, without the filing of a petition." An alternative model of requiring a petition to be filed by the juvenile and/or giving the court discretion whether to order destruction was rejected for two reasons. First, "Without an automatic, self-executory statute, only those with sufficient interest, knowledge, or money are fully assured of statutory protection." Note, "Juvenile Police Record-Keeping," 4 *Colum. Human Rts. L. Rev.* 461, 480 (1972). As a result,

a survey of a number of jurisdictions indicates that sealing and expungement statutes are rarely utilized if relief is dependent on the filing of a petition. See also, Gough, "A Problem of Status," *supra* at 176. Second, present case law suggests that destruction is required particularly if the charges were not supported by probable cause. See *Henry v. Looney*, 65 Misc. 2d 759, 317 N.Y.S.2d 848 (Sup. Ct. 1971); Altman, "Juvenile Information Systems," *supra* at 8-9. Thus, while this standard will require the destruction of records in some cases in which the courts have not generally ordered such relief (cases which are dismissed but there was probable cause for the arrest), the rationale for destruction supports a broader application of such a remedy in all cases included within this standard because the state interest in retaining a record in a case which is dismissed is outweighed by both the privacy interests of the juvenile (which include privacy and an interest in not being denied opportunities based upon the existence of a record) and the public interest in protecting juveniles from stigma and in promoting a juvenile's reintegration and rehabilitation.

17.3 Cases involving an adjudication of delinquency.

In cases in which a juvenile is adjudicated delinquent, all identifying records pertaining to the matter should be destroyed when:

A. no subsequent proceeding is pending as a result of the filing of a delinquency or criminal complaint against the juvenile;

B. the juvenile has been discharged from the supervision of the court or the state juvenile correctional agency;

C. two years have elapsed from the date of such discharge; and

D. the juvenile has not been adjudicated delinquent as a result of a charge that would constitute a felony for an adult.

Commentary

This standard applies the general principles supporting destruction of juvenile records (see Standards 5.8 and 17.1 and the commentaries thereto) to delinquency cases in which there has been an adjudication. As provided in Standard 17.2, destruction is automatic; and the filing of a petition is not required. See commentary to Standard 17.2. However, in cases in which there has been an adjudication, four criteria must be met before a record will be destroyed: 1. no new charges have been filed; 2. the juvenile is no longer subject to supervision ordered by a juvenile court; 3. the juvenile has been released from the court's supervision for two years; and 4. the juvenile was not adjudicated delinquent for committing what would constitute a felony offense for an adult.

Essentially, this standard provides for the destruction of court records when a juvenile has been convicted of committing a nonfelony offense. A two-year waiting period after release is required because it was believed to be a long enough period to indicate that the juvenile will be less likely to become involved in a juvenile or criminal court matter and a short enough period so that the protective purposes of destruction are served. See Note, "Juvenile Police Record-Keeping," *supra* at 480; Uniform Juvenile Court Act § 57 (a) (1) (1968).

The destruction of a child's felony conviction record in juvenile court is not authorized by this standard. While some states have passed laws which permit destruction of juvenile felony conviction records (see Ore. Rev. Stat. § 419.586, 12A Mo. Laws § 211.321; 5 Fla. Laws § 39.12), this standard does not so provide because the state interest in retaining the record of adjudication of a serious crime for law enforcement and sentencing purposes is regarded as greater than the interests which support destruction in other circumstances. See commentary to Standards 5.8 and 17.1. Provision for sealing a juvenile's record of a felony adjudication was considered and rejected because sealing was not regarded as an added measure of protection in the context of stringent criteria regulating access to (Standards 15.1-15.8) and controlling the use of (Standards 18.1-18.4) juvenile court records.

17.4 Cases involving a neglect petition.

In cases involving a neglect petition, all identifying records pertaining to the matter should be destroyed when:

A. no subsequent proceeding is pending as result of the filing of a neglect petition or delinquency complaint against the juvenile;

B. the juvenile is no longer subject to a disposition order of the court; and

C. the youngest sibling is older than sixteen years of age.

Commentary

In cases involving neglect, there are two reasons (other than research) for retaining records: 1. for use in a subsequent case involving the same juvenile; and 2. for use in a subsequent case involving a sibling. In both instances, the records gathered previously should contain relevant information with respect to present neglect, parental fitness, and the appropriateness of continuing parental custody. For these reasons, records in a neglect case should be preserved until the youngest sibling is sixteen years of age and there is neither a proceeding pending nor a disposition order that is in effect. Once the youngest sibling becomes sixteen years old, there is little likelihood of a subsequent neglect proceeding; and the reasons for destroying records, set forth in the commentary to Standards 5.8 and 17.1, then become applicable.

17.5 Providing notification of destruction to other agencies.

A. Whenever a juvenile's record is destroyed pursuant to this Part, the juvenile court should notify:

1. the chief of police of the department that arrested the juvenile or made application for the petition or complaint that was filed;

2. the commissioner of the state correctional agency if the juvenile was committed to the agency;

3. the commissioner of the state probation department; and

4. any other agency or department that the juvenile court has reason to believe may have either received a copy of any portion of the juvenile's record or included a notation regarding the juvenile's record in its own records.

B. Upon receipt of notification pursuant to subsection A., the person, agency, or department should search its records and files and destroy any copies or notations of the juvenile's record that have been destroyed by the juvenile court.

Commentary

This standard requires the juvenile court to notify the appropriate agencies that a juvenile's record has been destroyed. Upon receipt of such a notice, the agency is then required to destroy its references to the juvenile's record. The purpose of the standard is to ensure that, when an order requiring destruction is entered by a juvenile court, the efficacy of the order will not be minimized by allowing other agencies (particularly police) to retain a copy of the record, thereby subverting the purpose of the initial decree. Connecticut (§ 17-72a) similarly provides for notification to "all persons, agencies, officials, or institutions known to have information pertaining to the delinquency proceedings" and the removal of "all references" in "all agency, official, and institutional files." See also Ore. Rev. Stat. § 419.586. The ineffectiveness of a statutory scheme which does not provide for destruction of all records is noted in Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," 61 *J. Crim. L.C. & P.S.* 378, 383-85 (1970).

17.6 Providing notice of destruction to the juvenile.

A. Before destroying a juvenile's record, the juvenile court should

offer to provide a copy of that record to the juvenile if he or she can be located.

B. Upon destroying a juvenile's record, the juvenile court should send a written notice to the juvenile at his or her last known address informing him or her that the juvenile court record has been destroyed and that the juvenile may inform any person that, with respect to the matter involved, he or she has no record and, if the matter involved is a delinquency complaint, the juvenile may inform any person that he or she was not arrested or adjudicated delinquent except that, if he or she is not the defendant and is called as a witness in a criminal or delinquency case, the juvenile may be required by a judge to disclose that he or she was adjudicated delinquent.

Commentary

Subsection A. provides that a juvenile should be given an opportunity to obtain a copy of his or her record before it is destroyed. The reasons for this provision are discussed in the commentary to Standard 17.1.

Subsection B. provides for notice to be given to a juvenile of the effect of an order of destruction under Standard 17.7. The notice should be provided in a form and manner that will ensure that a juvenile is aware of his or her rights under Standard 17.7.

17.7 Effect of destruction of a juvenile record.

A. Whenever a juvenile's record is destroyed by a juvenile court, the proceeding should be deemed to have never occurred and the juvenile who is the subject of the record and his or her parents may inform any person or organization, including employers, banks, credit companies, insurance companies, and schools that, with respect to the matter in which the record was destroyed, he or she was not arrested, he or she did not appear before a juvenile court, and he or she was not adjudicated delinquent or neglected.

B. Notwithstanding subsection A., in any criminal or delinquency case, if the juvenile is not the defendant and is called as a witness, the juvenile may be ordered to testify with respect to whether he or she was adjudicated delinquent and matters relating thereto.

Commentary

Subsection A. provides further protection to a juvenile who has become enmeshed in juvenile court proceedings. First, it declares that, once a juvenile's record is ordered destroyed, "the proceeding should be deemed to have never occurred." Second, it authorizes the juvenile to deny both the existence of a record (which is true once the record is destroyed) and the existence of any of the events (arrest, adjudication, detention, etc.) which were the subject of the record.

Subsection A. seeks to ensure that a juvenile will not suffer any disabilities once his or her record is destroyed. It recognizes that destruction of a record can be meaningless if a prospective employer, for example, may inquire and a juvenile must respond to inquiries about his or her past juvenile record. Such a provision is strongly criticized by some authors. See Kogan and Loughery, "Sealing and Expungement of Criminal Records—The Big Lie," *supra* at 385. See also commentary to Standard 5.8. While it is true that a law which authorizes the denial of a fact is not desirable in an ideal world, there is no other alternative which will ensure complete protection for the juvenile. It could be argued that Standards 18.1-18.2 (prohibiting inquiries about juvenile records) provide sufficient protection; but, it appears that merely limiting inquiry is not sufficient in a world in which the seekers of information are already difficult to control. See generally A. Miller, *The Assault on Privacy* (1972). It could also be argued that the ends do not justify the means. However, if the right to deny the existence of a record is related to a juvenile in a manner so that it is perceived as a reward for staying out of trouble and as a recognition that the record loses any meaning (and therefore may be denied), if the juvenile succeeds in controlling his or her conduct for a period of time, then it is less likely that authorizing the juvenile to represent that he or she does not have a record and that he or she was never arrested will assume any symbolic significance in the juvenile's life or convey the impression that the courts are hypocritical. Since most juveniles view the legal process as somewhat mystifying, denying the existence of a record is not likely to be any more understood or misunderstood than the right to remain silent or the hearsay rule. Moreover, it would not be sufficient to provide that a juvenile may deny the existence of a record (once destroyed) but not the underlying facts because it has been held that a statute which prohibits employers from denying jobs based upon a juvenile record is not violated so long as the employer makes his decision based upon the underlying facts, rather than the record itself. *Cacchiola v. Hoberman*, 31 N.Y. 2d 287, 291 (1972) (concurring opinion).

Sixteen states already have promulgated laws which provide that, once a juvenile record is sealed or destroyed, "it shall be deemed to have never occurred." See Cal. Welf. and Inst'ns Code § 781; Ga. Code Ann. § 24A-3504(C); Colo. Rev. Stat. § 19-1-112(2)(d). See also, Uniform Juvenile Court Act § 57(C). Subsection A. is, therefore, consistent with the recent legislative trend.

Subsection B. is designed to incorporate *Davis v. Alaska*, 415 U.S. 308 (1974), in which the Supreme Court held that a defendant's sixth amendment right to confront a witness against him or her outweighs the juvenile's and public interest in maintaining the confidentiality of a juvenile record. Subsection B. should not be construed any more broadly than required by the sixth amendment. See Standard 18.4 and the commentary thereto. See also, Fed. R. Evid. § 609 (d) (1974).

PART XVIII: USE OF JUVENILE RECORDS

18.1 Use of juvenile records by third persons.

Public and private employers, licensing authorities, credit companies, insurance companies, banks, and educational institutions should be prohibited from inquiring, directly or indirectly, and from seeking any information relating to whether a person has been arrested as a juvenile, charged with committing a delinquent act, adjudicated delinquent, or sentenced to a juvenile institution, except the state agency or department responsible for juvenile justice may be authorized to inquire and seek such information pertaining to persons being considered for positions requiring ex-offenders.

Commentary

This standard prohibits employers, public and private, and other designated organizations from inquiring into a juvenile's record. The purpose of this standard is to place controls upon those who seek information, thereby complementing Standards 15.1–15.4, which establish controls over the possessors of information. The intent is to preclude various institutions from developing their own private information systems which might provide some of the record information to which they should not have access. The intent is also to reduce the pressure that is inevitably felt by government agencies that are continuously asked to provide records and information. If inquiry is banned, those who are likely to perceive that they are being denied what they need should be less likely and less willing to try to circumvent nondisclosure provisions. To accomplish that result, the various institutions are not only precluded from acquiring record information directly from criminal justice agencies, but they also may not seek such data indirectly from the juvenile or from a private association that may be in the business of collecting and selling such information. Thus, the terms "directly or indirectly," "any information," and "relating" should be broadly construed to ensure that the purposes of the standard will be realized.

18.2 Application forms.

All applications for licenses, employment, credit, insurance, or schooling, used by a licensing authority, employer, credit company, insurance company, bank, br educational institution, which seek information concerning the arrests or convictions or criminal history of the applicant should include the following statement: "It is unlawful for a licensing authority, employer, credit company, insurance company, bank, or educational institution to ask you, directly or indirectly, whether you have been arrested as a juvenile, charged with committing a delinquent act, adjudicated a delinquent, or sentenced to a juvenile institution. If you have been asked to disclose such information, you should report that fact to the state attorney general. If you have a juvenile record, you may answer that you have never been arrested, charged, or adjudicated delinquent for committing a delinquent act or sentenced to a juvenile institution."

Commentary

Fourteen states have statutes which specifically provide that a juvenile's record "does not impose any civil disability" or "disqualify the child in any civil service application or appointment." Texas Code ch. 51 § 51.13. See also, Ohio Code § 2151.358; Fla. Laws ch. 39 § 39.10(4). The National Council on Crime and Delinquency's Model Act for the Annulment of a Conviction of Crime, 8 *Crime & Delinq.* 100 (1962), would require that application forms include a provision which precludes inquiry into annulled convictions; and, Massachusetts has a similar provision with respect to sealed records of convictions. Mass. Gen. Laws, ch. 276 § 100A. Standard 18.2 is based upon these statutes and applies them to the specific context of juvenile records. By requiring application forms to include a statement about a juvenile's disclosure rights, the policies of nonaccess, Standards 15.1–15.4, and nonuse, Standard 18.1, are made more meaningful and more likely to succeed. It should be noted that, for purposes of this standard, "employer" includes all branches of the United States armed services.

18.3 Response to juvenile record inquiries.

If a person who is not authorized to receive record information pertaining to a juvenile seeks such information, the person to whom the request for information is made should inform the person who seeks the information that no record exists. If the information is sought on behalf of an employer, credit company, insurance company, bank, licensing authority, or educational institution, the person

APPENDIX D

STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE RECORDS PERTAINING TO JUVENILES

National Advisory Committee for Juvenile
Justice and Delinquency Prevention

1.5 Records Pertaining to Juveniles
1.51 Security and Privacy of Records

Each state and the Federal Government should enact statutes governing the collection, retention, disclosure, sealing, and destruction of records pertaining to juveniles to assure the accuracy and security of such records and to protect against the misuse, misinterpretation, and improper dissemination of the information contained therein.

Recordkeeping practices should be reviewed periodically to determine whether the information collected is necessary and whether it is being gathered, retained, utilized, and disseminated properly. Privacy councils should be established at the state and federal levels to assist in this review and in the enforcement of the statutes and regulations governing records pertaining to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 28.1 and 28.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 2.1, 2.2, 11.1, 11.2, and 19.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; *See also* Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* §§1.1-1.3, and 21 (1975); National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System,* §8.1 (1973) [hereinafter cited as *Criminal Justice System*].

Commentary

As recordkeeping methods have become increasingly numerous and sophisticated, there has been growing concern over the unnecessary stigmatization caused by the maintenance of the records of a person's childhood mistakes for decades after that person has reached adulthood, as well as over the accuracy, use, and misuse of data concerning juveniles and their families collected by private and public agencies. The various federal privacy statutes and regulations seek to identify recordkeeping systems, assure access by the subject of a record to the information contained therein, limit access by others, and provide procedures for correcting and updating records. However, except for records maintained by schools, the impact of these provisions on juveniles subject to the jurisdiction of state family courts is quite limited. *See* 20 U.S.C. §1232(g) (Supp. 1976); 45 C.F.R. §§99.1(a) and 99.3 (1976). For example, the Federal Privacy Act governs only identifiable information maintained by federal agencies, 5 U.S.C. §552a (Supp. 1976). The LEAA regulations on Criminal Justice Information Systems include records pertaining to juveniles only to the extent of requiring that state criminal justice history record information plans assure that juvenile records arising from delinquency and noncriminal misbehavior proceedings are not disseminated to noncriminal justice agencies except (a) when authorized by statute, executive order, or court rule or order; (b) for administrative purposes; or (c) for research, evaluative, or statistical activities. 28 C.F.R. §§20.21(b) and (d) (1976).

As for the states, one commentator has observed that while "most states have laws which serve as a general declaration that persons should not be denied opportunities based upon a juvenile record . . . [they] do not have laws specific enough to assure that the general legislative purpose is achieved." Altman, "Juvenile Information Systems: A Comparative Analysis," appearing in L. Boxerman, *Computer Applications in Juvenile Court,* 1, 9 (1974).

> First, there are no laws defining the purposes for which information may legitimately be collected and utilized . . . Second, there are no laws establishing any quality controls with regard to practices of collecting and using information . . . Third, there are no laws which presently recognize that a juvenile court's thirst for information should be weighed against a juvenile's right and need for privacy. This means that the juvenile justice system assumes that once it obtains jurisdiction over a child it may collect any and all information, no matter how "private" that information may be, no matter whether that information is only marginally relevant to a particular decision, and no matter how limited the scope of that decision may be . . . *Id.* at 5.

This standard urges that the federal and state governments enact comprehensive legislation to improve the quality and consistency of data-gathering and recordkeeping practices, and to protect the privacy of children and their families. It is intended to refer to records relating to children maintained by

educational and social welfare departments as well as by juvenile and criminal justice agencies, and to handwritten or typed records as well as to those on tape, computer cards, microfilm, or microfiche. Many of the features of such legislation are discussed in the remaining standards in this series.

The provision then recommends that recordkeeping practices should be subject to periodic review to assure compliance with the letter and the spirit of the law. Such regular audits are recommended by most of the commentators and standards groups which have addressed this area. *See, e.g., Report of the Task Force, supra;* IJA/ABA, *Information Systems, supra* at Standard 2.6; Regulations on Criminal Justice Information Systems, 28 C.F.R. §20.21(e); and Search Group, Inc., *supra* at §23. Civil and administrative remedies and strong criminal penalties should be available when the statutory or regulatory provisions on privacy are violated. *See* IJA/ABA, *Information Systems, supra* at Standards 2.3-2.5; Search Group, Inc., *supra* at §24; and Criminal Justice System, *supra* at §8.1.

In order to facilitate such audits, the standard recommends formation of Privacy Councils to institutionalize a concern for juvenile records, to provide a mechanism for promoting consistency in recordkeeping practices and to insure visibility in recordkeeping decisions. IJA/ABA, *Information Systems, supra,* Criminal History Record Control Boards were first proposed by the Search Group in 1971, to oversee compliance with state and federal privacy legislation and regulations. *See* Search Group, Inc., *supra.* The concept has been endorsed by the National Advisory Committee on Criminal Justice Standards and Goals in *Criminal Justice System, supra,* and applied to the juvenile area by both the *Report of the Task Force, supra,* and by the IJA/ABA, *Information Systems, supra.* However, unlike the *Report of the Task Force* and IJA/ABA, *Information Systems,* the National Advisory Committee concluded that creation of a council on children's records separate and apart from a general state security and privacy committee would add to the proliferation of agencies and committee without providing significant additional safeguards or benefits, especially since many of the same individuals would be likely to be asked to serve on both committees. However, each State Privacy Council should be authorized to establish a subcommittee to address juvenile records if it considers such a subcommittee to be necessary.

Related Standards

1.21 Data Base Development and Collection
1.22 Inventory and Analysis of Community Resources
1.23 Problem Identification and Prioritization
1.52 Collection and Retention of Records
1.53 Confidentiality of Records
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
3.147 Intake—Notice of Decision
3.172 Public and Closed Proceedings
3.186 Predisposition Investigations
4.214 Development of a Treatment Plan
4.233 Group Homes—Services

1.52 Collection and Retention of Records

Information identifiable to a juvenile or family should not be collected by law enforcement agencies, prosecutors' offices, courts, public agencies legally responsible for providing services to juveniles and to their families, or private organizations or programs under contract to such agencies or licensed to provide those services, unless essential:

a. To provide necessary services;

b. To make decisions regarding the juvenile or family in conjunction with the initiation, investigation, processing, adjudication, and disposition of a complaint or petition submitted pursuant to the jursdiction of the family court over delinquency, noncriminal misbehavior, or neglect and abuse;

c. To make decisions regarding the juvenile or family in conjunction with the appeal of the adjudication or an order in a delinquency, noncriminal misbehavior or neglect and abuse proceeding;

d. To provide services pursuant to a referral from an intake unit or the dispositional order of the family court;

e. To administer the court, agency, organization or program effectively and efficiently;

f. To monitor and evaluate the court, agency, organization or program; or

g. To conduct authorized research, evaluative, or statistical studies.

Such identifiable information should be retained in retrievable form only if it is accurate; protected from unauthorized access, disclosure, and dissemination; physically secure; and essential to accomplish one of the purposes specified in paragraphs (a) through (g). The subjects of such information should be notified that the information has been retained, and that they have the right to inspect the records and to challenge their accuracy and retention.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standards 3.2 and 4.1-4.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 28.1 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets out basic principles to guide the collection and retention of data pertaining to juveniles. It is premised on the view that limiting the information collected to only that which is absolutely essential is one of the most effective means of protecting the privacy of individuals, simplifying the problem of keeping identifiable records confidential and secure, and reducing the cost of data gathering and recordkeeping. *See* Standards 3.147 and 3.186. As is noted by both the *Report of the Task Force, supra* at Commentary to Standard 28.1, and the IJA/ABA, *Information Systems, supra* at Standard 3.1:

- Too much as well as too little information can inhibit the decision-making process;
- The need for information is directly related to the number of options available to the decision maker;
- The risk of abuse or misuse increase as the amount of information collected increases; and
- Much information now being collected is not used.

However, this is not intended to imply that no information pertaining to a juvenile should be collected nor records containing such information retained. As is indicated in the standard, identifiable information is needed to make the critical decisions in delinquency, noncriminal misbehavior, and neglect and abuse cases, to provide services to juveniles and their families; to conduct research into the nature and causes of delinquency, *see, e.g.*, M. Wolfgang, R. Figlio, and T. Sellin, *Delinquency in a Birth Cohort* (1972); to evaluate agency and program effectiveness; to facilitate proper planning and management for the juvenile service system; and to assure the accountability of individuals and programs. The intent of the standard is to increase awareness that identifiable information should not be utilized when nonidentifiable information will achieve the same objectives, and to assure that data is collected and stored only when the potential benefits from its use outweigh the potential injury to privacy and related protected interests. National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System*, §8.2 (1973) [hereinafter cited as *Criminal Justice System*].

The standard covers all components of the juvenile service system, including the traditional juvenile justice agencies and the schools, protective services, welfare, health and mental health agencies, and private groups, organizations, or programs which must obtain a license to provide services to juveniles or which provide such services under contract to a

public agency. *See* IJA/ABA, *Information Systems, supra* at Definition 1.

This broad coverage is necessary because of the network of interrelationships between the agencies comprising the juvenile service system. For example, family courts and intake units require information on the services which have been provided to juveniles and their families in order to make the decisions required under Standards 3.143-3.145, 3.151-3.158, and 3.182-3.184. Education records may be relevant in many noncriminal misbehavior cases as well as to residential programs providing educational services to juveniles subject to the jurisdiction of the family court. *See, e.g.,* Standards 3.182, 4.2161, and 4.263. In addition, since contracting for services is encouraged throughout these standards, the inclusion of private service providing programs appears necessary to assure consistency in recordkeeping practices and the privacy of individuals receiving the services. *See, e.g.,* Standards 4.2, 4.213, and 4.233.

Information or records identifiable to an individual refers to information which is indexed or able to be retrieved by name, identifying code or number, address or other personal characteristic. Thus, police blotters, court dockets, and other records compiled chronologically are not intended to be covered, nor are notations concerning an individual made in a file concerning another person. The effort involved in sifting through chronologically ordered records or seeking occasional notations substantially reduces the risk of harm. *See Report of the Task Force, supra;* and Regulations on Criminal History Information Systems, 28 C.F.R. §20.20(b) (1976). The standard is also not intended to affect retention of appellate decisions in juvenile cases, although in accordance with Standard 1.53 and the current practice in most states, the juvenile's name should not appear in the opinion.

The standard recommend that the decision to retain information be separated from the decision to collect it. Too often information which has proven to be inaccurate, irrelevant, or of only shortlived value is retained simply because of inertia, and gains importance and credibility by virtue of its existence. IJA/ABA, *Information Systems, supra.* Like the provisions on collection of information, the paragraph on retention applies only to records which are indexed or accessible by name or other identifier. It urges that before a decision to retain information is retained, its accuracy and completeness should be verified, *see* Standards 1.54 and 1.55, and its confidentiality and physical security assured. *See* Standards 1.53-1.535. It specifies further that information should be retained in identifiable form only if "essential" to accomplishing at least one of the seven reasons for collecting the information. These safeguards follow, in principle, the recommendations of the IJA/ABA, *Information Systems, supra, see also* 28 C.F.R. §20.21(a); and *Criminal Justice System, supra,* though the "essentialness" test is more stringent than the criteria proposed in the other provisions. Finally, the standard recommends that immediately after the decision to retain a record has been made, the retaining agency should notify the subject of the record of its existence, that he/she is entitled to inspect it subject to certain limitations, and of the procedures which apply to and identification required for gaining access to the record and to challenging its accuracy and the agency's right to maintain it. Standards 1.533, 1.534, and 1.55; *see also* IJA/ABA, *Information Systems, supra* at Standard 4.4; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 3.5 (tentative draft, 1977). Without such notice, the subject's rights of access would be meaningless.

The principles recommended in this and the other standards in this series are intended to apply to automated as well as manual record systems, and to centralized as well as locally maintained systems. While each type of record system has its benefits and its dangers and while no jurisdiction should rush headlong into automating and/or centralizing its records without assessing the costs, the basic issues of what information should be collected and retained, when and to whom identifiable information should be disclosed, how such information can be kept secure, complete, and accurate, and when it should be sealed or destroyed remain the same. *But cf.* IJA/ABA, *Information Systems, supra* at Standards 4.6 and 4.7; and *Report of the Task Force, supra* at Standard 28.4.

Identifiable records which are retained should not include summary conclusions or labels which describe a juvenile's social, emotional, medical, or behavioral history, or predict future behavior or attitudes unless the underlying or actual basis, meaning, and implications are explained in terms that are understandable to laymen, and the use of such professional jargon cannot be avoided. IJA/ABA, *Information Systems, supra* at Standard 4.5.

Related Standards

1.51 Security and Privacy of Records
1.53 Confidentiality of Records
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
3.146 Intake Investigation
3.186 Predisposition Investigations
3.187 Predisposition Reports

1.53 Confidentiality of Records

Identifiable information retained under Standard 1.52 should not constitute a public record. Access to such information should be strictly controlled.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 28.2 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 15.1 and 20.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

This standard urges that records pertaining to juveniles or their families which are indexed or retrievable by name or other identifier should be strictly controlled. The laws regarding the confidentiality of and access to identifiable records pertaining to juveniles vary widely with regard to both the stringency of the protection and the types of agencies covered. The intent of such statutes is to reduce the risk of stigmatization and dissemination resulting from contact with the juvenile justice system. However, Michael Altman points out that:

> This is a lofty purpose but, as many studies have indicated, it hasn't worked. It hasn't worked because many employers and educators believe that they are taking risks when they employ or enroll a person with a record; because many employers and educators are unwilling to expend funds to conduct a complete investigation to determine whether the existence of a record actually reflects upon the person's present qualifications or trustworthiness, and because there are many loopholes and inadequacies in the laws which seek to preserve confidentiality and eliminate collateral disabilities. Altman, "Juvenile Information Systems: A Comparative Analysis" appearing in L. Boxerman, *Computer Applications in Juvenile Court,* 1, 4 (1974).

Confidentiality of records pertaining to juveniles and closely controlled access to them have been endorsed by all of the major standards groups and model legislation which have addressed the problem. *E.g.,* groups and model legislation which have addressed the problem. *E.g., Report of the Task Force, supra;* IJA/ABA, *Information Systems supra;* IJA/ABA Joint Commission, *Standards Relating to Neglect and Abuse,* Standard 3.4 (tentative draft, 1977); *Model Act for Family Courts,* §§45 and 46 (1975); *Uniform Juvenile Court Act,* §§54 and 55 (1968); U.S. Department of Health, Education and Welfare, *Proposed Model Child Act,* §24 (draft, August 1977); *see also* Regulations on Criminal Justice Information Systems, 28 C.F.R. §20.21(d) (1976); 18 U.S.C. §5038 (Supp. 1976).

It should be noted that the National Advisory Committee has drawn a distinction between the confidentiality of records and the confidentiality of family court proceedings. Standard 3.172 recommends that respondents in delinquency, noncriminal misbehavior, neglect and abuse cases should be entitled to open the proceedings to the public, and that news coverage be limited only by:

> Written voluntary guidelines . . . developed by the news media in conjunction with the family court [which] . . . outline the items related to family court proceedings that are and are not generally appropriate for reporting.

The distinction is based on the impact which "free and robust reporting, criticism, and debate" can have on public understanding of the law and on the accountability of the judicial system, *see Nebraska Press Association v. Cox,* 427 U.S. 539, 587, (1976) (Justice Brennan, Concurring), the prohibition announced in the *Nebraska Press Association* case, on imposing a ban on publication of information available to the public, *id.* at 570, and the knowledge that in most cases, retention of identifiable information obtained at an open hearing will be subject to the limitations of memory of the relatively few people who attend the hearing or who may have been told about the experience. Records, on the other hand, unless access and retention are restricted, will remain available long after the court proceedings have been concluded to persons wholly unconnected with the case, and will, regardless of whether they have been updated, retain an aura of authority which may be out of proportion to their significance at the time of examination. Therefore, identifiable records appear to have a far greater potential for misuse.

Standards 1.531-1.535 set forth detailed recommendations regarding access to law enforcement, court, intake, detention, emergency custody, dispositional, and child abuse investigation records, as well as access to identifiable records pertaining to juveniles by persons or agencies conducting research, evaluative, or statistical studies. Although not covered by these standards, the National Advisory Committee on Standards urges that the news media impose similar controls on access to their files on juveniles who have come in

contact with the Juvenile Justice System. Access to education records is governed by the regulations implementing 20 U.S.C.A. §1232(g) (Supp. 1976), 45 C.F.R. Part 99 (1976). For purposes of these standards the most relevant sections of those regulations are §§99.11-99.12 on the procedures for sending education records without parental or student consent, *inter alia*, to officials of another school or school system in which the student seeks to enroll, state and local officials to whom the information is statutorily required to be disclosed, and to comply with a court order. *See also* 145 C.F.R. §99.37 on disclosure of directory information.

The provisions on access to records are intended to limit redisclosure of identifiable information by persons, other than the subject of the record, who have been granted access. Stiff civil and criminal penalties should apply to unauthorized disclosure. *See* Standard 1.51.

Related Standards

1.51 Security and Privacy of Records
1.52 Collection and Retention of Records
1.531 Access to Police Records
1.532 Access to Court Records
1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534 Access to Child Abuse Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies.
1.56 Destruction of Records
3.172 Adjudication Procedures—Public and Closed Proceedings

1.531 Access to Police Records

Access to records and files maintained by law enforcement agencies pursuant to Standard 1.52 should be restricted to:

a. The juvenile who is the subject of a record and his/her counsel;
b. The parents, guardian, or primary caretaker of a juvenile named in the record and their counsel;
c. Law enforcement officers when essential to achieve a law enforcement purpose;
d. Judges, prosecutors, intake officers, individuals conducting a predisposition investigation, and individuals responsible for supervising or providing care and custody for juveniles pursuant to the dispositional order of the family court, when essential to performing their responsibilities;
e. Individuals and agencies for the express purpose of conducting research, evaluative, or statistical studies; and
f. Members of the administrative staff of the maintaining agency when essential for authorized internal administrative purposes.

Access under paragraph (c) should only be granted to law enforcement officers in another jurisdiction when the juvenile has been adjudicated or when there is an outstanding order to take the juvenile into custody.

Access under paragraph (e) should be subject to the conditions set forth in Standard 1.535.

Intelligence information—identifiable information compiled in an effort to anticipate, prevent, or monitor specific acts of delinquency—and investigative information—identifiable information compiled in the course of the investigation of specific acts of delinquency—should be maintained separately. Access should be limited to law enforcement officers within the agency when essential to achieve a law enforcement purpose, and to officers in other agencies to confirm information in the files of the other agency or to assist in an ongoing investigation.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standards 20.2-20.3, (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information*, §§15(c) (2) and (3) and 15.2 (1975); *see also* 28 C.F.R. §20.21(g) (1976).

Commentary

Standard 1.531 recommends restrictions on the dissemination of identifiable information pertaining to juveniles maintained by law enforcement agencies. As noted in *In re Gault*, 387 U.S. 1, 24-25 (1967):

> Police departments receive requests for information from the FBI and other law enforcement agencies, the armed forces, and social agencies, and most of them generally comply. Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies.

While the issuance of regulations governing dissemination from criminal justice information systems receiving LEAA support has limited access to law enforcement records regarding juveniles to some extent, 28 C.F.R. §§20.21(b) and (d) (1976), the degree to which such records remain available to persons and agencies inside and outside the juvenile justice system continues to vary greatly from jurisdiction to jurisdiction. In light of this variation, the standard specifies the groups and individuals who should be given access, rather than including a general clause allowing access for persons or agencies with a "legitimate interest" who have obtained an order from the family court. *See, e.g., Model Act for Family Courts*, §46(b) (3) (1975).

Paragraph (a) recommends that the juveniles and/or their attorneys should be given access to law enforcement files concerning them. Such access should be on request and subject to reasonable published rules and regulations. The policy of allowing access by the subject of a record is becoming increasingly accepted and is endorsed by section 524(b) of the Crime Control Act and the regulations issued pursuant thereto, 28 C.F.R. §§20.21(g) and 20.34; the Federal Privacy Act, 5 U.S.C. 552a(b) (i) (Supp. 1976); the National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System*, §8.4 (1973); and the IJA/ABA, *Information Systems*, *supra*; *but see* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 5.14 and 28.2 (1976) [hereinafter cited as *Report of the Task Force*]. Access by the subjects of records or their counsel is intended to assure the

accuracy of records and compliance with the prescribed recordkeeping, practices, and policies. If a complaint or petition has been filed, access should be limited by the rules of discovery until after dismissal or disposition. *See* Standard 3.167.

Pagragraph (b) is intended to provide access to parents or parental surrogates alleged or found to have neglected or abused their child or repeatedly misused their parental authority, as well as to the parents, guardians or primary caretakers of juveniles accused or proven to have commited delinquent acts or engaged in noncriminal misbehavior. *See* IJA/ABA, *Information Systems, supra* at Standard 20.2; *Model Act for Family Courts, supra; but see Report of the Task Force, supra.* The same reasons underlying access by juveniles support access by their parents.

Paragraphs (c) and (d) recommend access by law enforcement and juvenile justice officials involved in investigating, reviewing, processing, or adjudicating the case, or responsible for supervision or custody of the juvenile. However, they provide that records should not be disclosed unless it is "essential to carrying out the judge's, official's, or officer's lawful duties. As in Standard 1.52, the "essentialness" test is intended to be more stringent than that contained in the source provisions.

Extra precautions are recommended for transfer of information to law enforcement officials in jurisdictions other than that of the maintaining agency, so as to limit the spread, and thus enhance the control of information pertaining to a juvenile. Records of juveniles whose cases were dismissed or have not yet been adjudicated, should not be disseminated in other jurisdictions in order to avoid misinterpretations and unwarranted inferences. *See IJA/ABA, Information Systems, supra* at Standard 20.3.

Access by researchers and evaluators to identifiable data can be critical to efforts to understand the nature and causes of delinquency, noncriminal misbehavior, neglect and abuse, to examine society's response to it, and to improve the operation of the juvenile justice system. Paragraph (e) provides for such access, subject to the safeguards recommended in Standard 1.535. *See* IJA/ABA, *Information Systems, supra* at Standards 20.3 and 5.6; 28 C.F.R. *supra* at §20.21; 28 C.F.R. Part 22 (1976); *but see Report of the Task Force, supra.*

Paragraph (f) provides access when essential for monitoring or administrative purposes. This is not intended to include screening records when an individual seeks a job as a police officer or another governmental post. *See* IJA/ABA, *Information Systems, supra* at Standard 15.3(e); *Model Act for Family Courts, supra;* 28 C.F.R. §20.21(d) and comment thereto; *but see* Search Group, Inc., *supra* at §§11 and 12. *See also* Hawaii Revised Statutes §571-1 (Supp. 1976). The commentary to the regulations on Criminal Justice Information Systems, points out that 28 C.F.R. §20.21(d) "denies access to records of juveniles by federal agencies conducting background investigations for eligibility [sic] to classified information under existing legal authority." The National Advisory Committee recommends in addition, that other relevant federal statutory and regulatory provisions be modified to prohibit requests to law enforcement agencies by the armed services for access to the juvenile records of applicants for enlistment. *See, e.g.,* 10 U.S.C. §504 (1976); and 32 C.F.R. §§571.2(e) (5) (b), 729.6 (b) (4); 888.2(c) and 888.7 (1976). The Committee is in agreement with the resolution adopted by the National Council of Juvenile Court Judges in July 1976, that the armed services can "exert a great rehabilitative factor in transforming young troubled citizens into responsible mature adults leading meaningful and disciplined lives." Although under Standard 1.54 law enforcement records would include the disposition of all matters listed, and under Standard 1.55 the subjects of such records would be able to correct errors and ambiguities, the examination of law enforcement records regarding offenses alleged to have been committed by juveniles retains too great a risk of misinterpretation to warrant the apparent authority to request record checks from local police. One of the traditional reasons for confidentiality of family court proceedings is to allow juveniles to outgrow their mistakes. While as Altman points out, the arguments for allowing prospective employers to see a juvenile's arrest record are very strong in extreme cases—e.g., the child molester seeking a job as a day care teacher—the effort to encourage positive life roles discussed in the prevention chapter and the growing importance of government jobs in the employment market support the view adopted by the IJA/ABA Joint Commission, the *Model Act for Family Courts,* and the Criminal Justice Information Systems Regulations that the general rule for adults included in the Search materials should not be extended to juveniles.

The final paragraph of the standard sets out stringent restrictions on the dissemination of intelligence and investigative information. As noted in the commentary to the provision recommended by the Search Group Inc., *supra:*

> Because of the sensitive and potentially damaging nature of criminal intelligence information, much of which often is unverified, the maintenance, dissemination, and use of such information should be strictly limited to criminal justice purposes . . . In additon, there should be some reasonable limits on the instances in which intelligence information concerning an individual may be collected and the period of time it may be maintained in the absence of some indication of its continued usefulness and relevance.

It should be noted that unlike the Search provisions, the standard limits disclosure to instances in which the information is essential to the performance of law enforcement duties rather than to those in which the requesting officer has merely a "demonstrable need."

It is intended here and in the other sections on access, that agencies with access to identifiable records pertaining to juveniles should authorize a limited number of individuals to receive and review such records, and that reproduction or divulging of disclosed records, other than by the subject of the record, be prohibited.

A provision suggesting guidelines and limits for fingerprinting and photographing of juveniles is included in the chapter on intervention. *See* Standard 2.246.

Destruction of law enforcement records should be governed by the principles set forth in Standard 1.56. Stringent penalties should be imposed for unauthorized disclosure of identifiable information by law enforcement personnel or by individuals.

other than the subject of the information, who have had access to law enforcement records.

Related Standards

1.51 Security and Privacy of Records
1.53 Confidentiality of Records
1.532 Access to Court Records
1.533 Access to Intake, Detention, Emergency, Custody, and Dispositional Records
1.534 Access to Child Abuse Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
2.21 Authority to Intervene
2.22 Decision to Refer to Intake
2.221 Criteria for Referral to Intake—Delinquency
2.222 Criteria for Referral to Intake—Noncriminal Misbehavior
2.223 Criteria for Referral to Intake—Neglect and Abuse
2.23 Decision to Take a Juvenile Into Custody
2.231 Criteria for Taking a Juvenile Into Custody—Delinquency
2.232 Criteria for Taking a Juvenile Into Custody—Noncriminal Misbehavior
2.233 Criteria for Taking a Juvenile Into Emergency Protective Custody
2.246 Procedures for Fingerprinting and Photographing Juveniles

1.532 Access to Court Records

Access to case records and files maintained by court under Standard 1.52 should be restricted to:

a. The juvenile who is the subject of the record and his/her counsel;
b. The parents, guardian, or primary caretaker of the juvenile named in the record and their counsel
c. Other parties to the proceedings and their counsel;
d. Intake officers, judges, prosecutors, and individuals conducting predispositional or presentence investigations, when essential to performing their responsibilities;
e. Individuals and agencies for the express purpose of conducting research, evaluative, or statistical studies; and
f. Members of the clerical or administrative staff of the family court if essential for authorized internal administrative purposes.

In addition, objective information such as the nature of the complaint or petition and its disposition should be available to an individual or public agency directed by a dispositional order to take custody of a juvenile or to provide services to or supervise a juvenile and/or his/her family; to a law enforcement agency when such information is essential to executing an arrest warrant or other compulsory process or to conducting an ongoing investigation; to the state motor vehicle department for licensing purposes when the juvenile has been found to have committed a traffic offense; or to an agency or individual when essential to secure services or a benefit for the juvenile. Notice of such disclosures should be sent to the juvenile and his/her parents, guardian, or primary caretaker.

Access granted under paragraph (e) should be subject to the conditions set forth in Standard 1.535.

Access to identifiable intake, detention, emergency custody, and dispositional records maintained by courts should be governed by the principles set forth in Standard 1.533.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standards 15.2 and 15.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

According to M. Levin and R. Sarri, *Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States*, 58 (1974), forty-three states forbid public inspection of records maintained by juvenile courts. They note, however, that "these provisions commonly allow the juvenile court judge to release these records when he chooses;" and that "meaningful statutory guidelines regulating the exercise of the discretion are lacking." This standard recommends promulgation of such guidelines for all court files and records pertaining to juveniles which are indexed or retrievable by name or other identifier, and which result from the filing, processing, adjudication, or disposition of delinquency, noncriminal misbehavior, or neglect and abuse complaints and petitions, or from the appeal of interlocutory decisions, adjudications, or dispositions in such cases. Similar if not more stringent restrictions should be imposed on access to identifiable files and records maintained by prosecutors' offices and agencies providing legal services to juveniles and their families, in addition to the traditional privileges and ethical considerations which now apply. Access to intake, predispositional, community supervision, and residential facility records maintained by courts and juvenile service agencies is discussed in Standard 1.533.

Paragraphs (a) and (b) are parallel to provisions on access to law enforcement records in Standard 1.531. Access by the juvenile and parent is essential for providing sufficient notice of the allegations. *See* Standard 3.171. For similar reasons, paragraph (c) recommends access by the prosecuting attorney who is handling the case and to other parties to the proceedings—e.g., the schools in a noncriminal misbehavior proceeding based on allegations of truancy or a corespondent. *Cf.* Standard 3.167; *See* IJA/ABA, *Information Systems, supra; see generally* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 28.2 (1976) [hereinafter cited as *Report of the Task Force*. Paragraph (d) is intended to cover judges in both the family court division and the criminal divisions of the highest court of general jurisdiction, as well as individuals responsible for preparing predispositional or presentence reports. This is to accommodate transfers of delinquency cases to the criminal division, and sentencing of young adults convicted of committing offense. *See* Standard 1.56 and IJA/ABA, *Information Systems, supra*. Access is subject to the stringent need-to-know policy applied throughout these standards.

Paragraphs (e) and (f) are identical to their counterparts in Standard 1.531. *See* Standard 1.535; IJA/ABA, *Information Systems, supra; Report of the Task Force, supra.*

The standard also recommends that certain portions of the court's case file may be made available to supervision or other public agencies ordered to provide care and custody to a juvenile, or to provide services to or supervise a juvenile and or family; to motor vehicle departments authorized to revoke or refuse to issue a driver's license upon adjudication of a traffic offense; and in limited circumstances, to a law enforcement agency. These portions include the order issued in the case, the complaint and petition, the juvenile's name and address and docket entries if any, but not transcripts, evidence, reports, briefs, or memoranda which have been submitted. Generally, such agencies require only a copy of the charge and of the dispositional order and not the other material included in court records; hence there is little reason to provide access. *See* IJA/ABA, *Information Systems, supra* at Standard 15.3. For access to the predisposition report, *see* Standard 1.533.

In addition, the standard provides that information regarding the charge or the disposition may also be provided, presumably by the agency responsible for community supervision, *see* Standards 4.11 and 4.31, to another agency or individual if disclosure is essential to obtain a service or benefit. It is intended that such information should be disclosed orally and solely on a need-to-know basis—e.g., for an employment program designed for adjudicated delinquents. *See* Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* § 13.2 (1975); *see also* IJA/ABA, *Information Systems, supra* at Standards 15.3(E) and 15.4(E) (2). Prompt notice of such disclosure should be sent to the juvenile and his/her parents or parental surrogate in order to provide them an opportunity to send additional information to the individual or agency to which the disclosure has been made, to correct any errors and to facilitate monitoring of disclosure practices. *See* Standards 1.51 and 1.55. As is the case with law enforcement records, federal statutory and regulatory provisions should be modified to prohibit requests to courts by the armed services for access to the juvenile records of applicants for enlistment. *See* Commentary to Standard 1.531.

No special provision is made for access to records by the press. While this is not intended to precluded attendance at and reporting of proceedings held in open court pursuant to the guidelines recommended in Standard 3.172, it does restrict media access to identifiable records both contemporaneous with and subsequent to those proceedings unless the provision on access for research, evaluative, and statistical studies applies. *See* Standard 1.535.

Court records should be subject to the provisions for destruction of records discussed in Standard 1.56. Unauthorized disclosure of identifiable court records, should be subject to stringent sanctions. These should apply to persons, other than the subjects of the records, who violate the statutory provisions governing confidentiality of identifiable information pertaining to juveniles after having access to court records.

Related Standards

1.52 Collection and Retention of Records
1.53 Confidentiality of Records
1.531 Access to Police Records
1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534 Access to Child Abuse Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
3.11 Jurisdiction
3.167 Discovery
3.172 Public and Closed Proceedings

1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records

Access to records regarding intake, detention, emergency custody, and dispositional decisions and proceedings maintained by courts pursuant to Standard 1.52, and public agencies responsible for intake, detention, and emergency custody decisions; public agencies responsible for supervision of juveniles and/or families prior to disposition or pursuant to a dispositional order of the family court; public agencies responsible for preparation of presentence reports; public agencies responsible for the care and custody of juveniles prior to disposition or pursuant to a dispositional order of the family court; or private programs under contract to or licensed by such agencies to provide for the care and custody of juveniles subject to the jurisdiction of the family court, should be limited to:

a. The juvenile who is the subject of the record and his/her counsel;
b. The parents, guardian, or primary caretaker of the juvenile named in the record and their counsel;
c. Intake officers, judges, prosecutors, and individuals responsible for conducting predispositional or presentence investigations or for supervising juveniles or families prior to disposition or subject to the dispositional order of the family court, when essential to performing their responsibilities;
d. A public agency directed to take custody of or provide services to the juvenile who is the subject of the record;
e. Individuals and agencies for the express purpose of conducting research, evaluative, or statistical studies; and
f. Members of the clerical or administrative staff of the maintaining agency when essential for authorized internal administrative purposes.

The maintaining agency should also be authorized to disclose portions of such records to an agency or individual on a need-to-know basis when disclosure is essential to secure services or benefits for the juvenile and/or family. Written notice of such a disclosure should be sent to the juvenile and his/her parents, guardian, or primary caretaker.

When the subject of a record or his/her parent, guardian, or primary caretaker request access to records which contain information that is likely to cause severe psychological or physical harm to the juvenile or to his/her parents, guardian, or primary caretaker, that information should ordinarily be disclosed to the requesting person's attorney or other independent representative, or through a counseling or mental health professional. In cases in which there is an exceptional risk of severe harm and disclosure through an intermediary is not feasible, the maintaining agency should apply to the family court for authorization to withhold the harmful information or to delete it from the records, such applications should be heard *ex parte,* but the requesting party should be notified of a decision to grant an application to withhold information and of the reasons therefore.

Access to medical and mental health records should be governed by the laws defining the scope of the doctor-patient privilege, the therapist-patient privilege and other applicable privileges, except that records containing information obtained in connection with the provision of counseling, mental health, or medical services to a juvenile which the juvenile has a legal right to receive without the consent of his/her parents or guardian, should not be disclosed under paragraph (b) and should not be granted without the juvenile's informed written consent.

Access under paragraph (e) should be subject to the conditions set forth in Standard 1.535.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Standards, *Standards Relating to Records and Information Systems,* Standards 5.2, 5.5(a) and (b), and 15.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; American Bar Association, *Standards Relating to Sentencing Alternatives and Procedures,* §4.4 (1968) [hereinafter cited as ABA, *Sentencing*].

Commentary

This standard governs disclosure of identifiable reports, files and records likely to contain social history, diagnostic, and other subjective information pertaining to juveniles and their families. As stated in U.S. Department of Health, Education

and Welfare, *Standards for Juvenile and Family Courts*, 177 (1966):

> . . . [S]ocial records contain so many matters affecting the intimate, personal affairs of individuals, they require a greater degree of protection than that recommended in the case of legal records.

The standard applies to records maintained by courts, intake units, public agencies responsible for the preparation of predispositional reports and for the supervision of juveniles and or their families, and public and private agencies and programs responsible for providing care, custody, or services to a juvenile or family prior to disposition or pursuant to a dispositional order of the family court. *See* Standards 3.141, 3.186-3.187, 4.11, and 4.31. Intake unit records are included since they may contain information concerning services provided to juveniles and their families, the responses to those services, and other nonobjective information. *See* Standards 3.143-3.146.

Consistent with Standards 1.531 and 1.532, paragraphs (a) and (b) recommend that the juvenile, the juvenile's counsel, the juvenile's parent or parental surrogates and their counsel, should all have access to intake, dispositional, and other such records. *See* IJA/ABA, *Information Systems; supra;* and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 28.2 (1976) [hereinafter cited as *Report of the Task Force*]. Disclosure of the information contained in those records, especially when it is the basis for significant decisions affecting custody and treatment, is essential to assure accuracy and fairness. *See Kent v. United States*, 383 U.S. 541, 562 (1966); Standards 1.55, 3.147, 3.155-3.157, and 3.187. However, social information concerning one corespondent should not ordinarily be given to another corespondent, his/her parents, or counsel.

Social histories, unlike case files, may contain information which could detrimentally affect a parent's or juvenile's emotional health or aggravate exisitng family conflicts. In situations in which the parties are represented by attorneys, assuring that any fact or opinion which could serve as a basis for a decision adversely affecting an individual is at least disclosed to counsel protects fairness while providing a means for safeguarding the parties from harmful information. *See* Standards 3.155-3.157, and 3.187. But in view of the fact that requests for dispositional information may be made following disposition when the juvenile or family is not actively represented by an attorney, this standard provides in addition, that disclosure may be made through an independent representative who can weigh the risk of harm, or through a professional counselor or mental health professional who can provide the necessary treatment and support. This follows the recommendations adopted by the IJA ABA, *Information Systems, supra* at Standard 5.5; and *Report of the Task Force, supra*. The IJA/ABA, *Information Systems* recommends as a third alternative, that the agency simply delete the potentially harmful information and assure that the information "will not be used in any way against the juvenile." *See also Report of the Task Force, supra*. This fails to provide for the possibility that the information may have already been used at the time of the request—e.g., to deny the juvenile entrance into a particular program. Hence, the standard provides that in the event that no intermediary is available and the risk of harm is particularly acute, the maintaining agency may apply to the family court to withhold potentially harmful items. Notice that information has been withheld should be given to the parties and the decision to withhold information should be subject to appeallate review. This procedure is comparable to that recommended by the ABA, *Sentencing, supra* at §4.4(b).

The standard also recommends that information resulting from counseling, psychological, psychiatric, or medical services which the juvenile lawfully obtained without the consent of his/her parents, should be withheld from the parents unless the juvenile authorizes its disclosure. *See generally* IJA/ABA, *Information Systems, supra* at Standard 5.2(B). Depending on state law, this may include instances in which older juveniles have lawfully received birth control counseling, received treatment for drug or alcohol abuse, received psychiatric help, been treated for venereal disease, or had an abortion without their parents' knowledge. *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Rights of Minors*, Part IV (tentative draft, 1977). While such information may not fall within the narrow definition of harmful information discussed above, its inadvertent disclosure could adversely affect attempts to strengthen family ties and discourage voluntary utilization of available counseling and other services by juveniles.

Paragraph (c) recommends access by judges, prosecutors, and intake officers assigned to the case, and to individuals supervising the juvenile and/or family before or after disposition. *see* Standards 1.531, 1.532, and 1.534; IJA/ABA, *Information Systems, supra; Report of the Task Force, supra; Model Act for Family Courts*, §45 (1975)

Paragraph (d) provides for automatic access by the public correctional or social services after disposition. However, access by private agencies or programs which have contracted with a public agency to provide such services, is subject to the discretion of the maintaining agency and requires the notification of the juvenile named in the record or his/her parents, guardian, or primary caretaker. Disclosure to such private agencies and programs should be limited to that information which is essential to the procurement of the needed services or benefits. *See* Standards 1.531, 1.532, and 1.534. These restrictions are consistent with those imposed in Standard 3.187 and are recommended in view of the lesser degree of control and security which many small service programs and private group homes can provide for intake and predisposition reports and diagnostic records. The provisions concerning access by researchers and administrative staff are identical to those in the other provisions in this series.

Before disclosure is made to any of the individuals or agencies listed, the maintaining agency should assure that the information contained in the files is verified and accurate. Unreliable information should be purged from the files, and so should the working notes of the individual collecting the information as soon as they are no longer necessary for the investigation and reporting process. *See* Standard 1.54.

For the reasons discussed in the Commentary to Standard 1.531, federal statutes and regulations should not permit the armed services to seek access to the intake, detention, emergency custody, or dispositional records of applicants for enlistment.

Destruction of the types of records discussed in this provision should be governed by the principles set forth in Standard 1.56. Stringent penalties should be applied in the event of unauthorized disclosure, by agency or court personnel or individuals, other than the subjects of the records who violate the statutory provisions governing confidentiality of identifiable information pertaining to juveniles.

Related Standards

1.52 Collection and Retention of Records
1.53 Confidentiality of Records
1.531 Access to Police Records
1.532 Access to Court Records
1.534 Access to Child Abuse Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
3.141 Organization of Intake Units
3.146 Intake Investigation
3.186 Predisposition Investigations
3.187 Predisposition Reports
4.11 Role of the State
4.214 Development of a Treatment Plan
4.2171 Initial Health Examination and Assessment
4.223 Camps and Ranches—Services
4.233 Group Homes—services
4.263 Detention Facilities—Services
4.54 Disciplinary Procedures
4.81 Grievance Procedures

1.534 Access to Child Abuse Records

Access to records which are maintained under Standard 1.52 and which pertain to the reporting or investigation of alleged incidents of child abuse as defined in Standard 3.113(b), or to the initiation of a neglect or abuse complaint should be limited to:

a. The juvenile named in the report or complaint and his/her attorney;
b. The parents, guardian, or primary caretaker of that juvenile and their attorney;
c. Individuals or public agencies conducting an investigation of a report of child abuse, or providing services to a juvenile or family on a voluntary basis following such a report, when access is essential to performing their responsibilities.
d. Intake officers, judges, prosecutors, and individuals responsible for conducting predispositional investigations or supervising families subject to the dispositional order of the family court, when access is essential to performing their responsibilities;
e. A public agency directed to take custody of the juvenile who is the subject of the record, or to provide services to the juvenile or his/her parents, guardian, or primary caretaker;
f. Individuals for the express purpose of conducting research, evaluative or statistical studies; and
g. Members of the clerical or administrative staff of the maintaining agency when essential for authorized internal administrative purposes.

The maintaining agency should also be authorized to disclose portions of such records to an agency or individual on a need-to-know basis when disclosure is essential to diagnosis or treatment of the juvenile's conditions or to secure services or benefits for the juvenile and/or family. The agency should also be authorized to disclose to a person required by law to report instances of possible child abuse coming to his/her attention, a summary of the actions taken following such a report. Written notice of all disclosures should be sent to his/her parents, guardian, or primary caretaker.

Access by the subject of a record of his/her parent, guardian, or primary caretaker, or to a person who made a report of abuse or cooperated in a subsequent investigation thereof, and access to medical and mental health records should be governed by the principles and procedures set forth in Standards 1.533. Access under paragraph (f) should be subject to the conditions set forth in Standard 1.535.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 5.2, 5.5, and 15.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §24 (draft, 1977).

Commentary

This standard sets forth the principles governing the disclosure of records pertaining to the reporting and investigation of child abuse—i.e., a physical injury or injuries inflicted nonaccidentally by a juvenile's parents, guardian, or primary caretaker, which causes or creates a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm. *See* Standard 3.113(b). Questions concerning the confidentiality of such records are especially significant in view of the current emphasis on enactment of broad child abuse reporting statutes. *See, e.g.,* Child Abuse Prevention and Treatment Act, Pub. Law No. 93-247 §4(b) (2), (1974). Like the other provisions in this series, no distinction is made between information maintained locally and that maintained in a central register.

The standard closely follows the provision in Standard 1.533 on access to intake, detention, emergency custody, and dispositional records. It recommends disclosure of child abuse records to persons named in the report or complaint, including both the juvenile and the juvenile's parents or parental surrogates. Such disclosure is necessary to provide both proper notice of the allegations and an opportunity to correct misunderstandings and supply explanatory and/or exculpatory information. *Accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 3.4(c) (2) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §24 (draft, 1977); 45 C.F.R. 1340.3-3(5) (1976). It is anticipated that as with intake and predispositional reports, child abuse investigation and reporting records will ordinarily be disclosed to the attorneys for the parties rather than directly to the parties themselves. *See* Commentary to

Standard 1.533. It would then be for counsel to decide what information should be withheld so as not to cause severe psychological or physical harm to the juvenile, to his/her parents, guardian, or primary caretaker, or to a person who reported the alleged abuse or furnished information during the investigation or the allegations. As with the information covered in Standard 1.533, when the juvenile or parent is not represented by counsel, harmful information would be subject to excision from a record or report only when the family court finds that the risk of harm is exceptionally great, and disclosure through an independent representative or a counseling or mental health professional is not feasible.

Whether or not to disclose the identity of persons making child abuse reports to the subjects of those reports is a major point of difference in the proposals on child abuse reporting. On the one hand, it is argued that disclosing the identity of informants will discourage persons from reporting instances of child abuse. A. Sussman and S. Cohen, *Reporting Child Abuse and Neglect: Guidelines for Legislation*, 47-50 (1975); IJA/ABA, *Neglect, supra.* On the other hand, Commentary to the *Proposed Model; Child Protection* Act, *supra* at §21(h), suggests that:

> Only with informed vigilance of persons who are the subject of reports can the accuracy of the information in it be fully assured. Thus, under this subsection, a subject of a report may receive a copy of all the information about him contained in the register at any time. Such notice is a matter of fundamental fairness—people ought to know what information a government agency is keeping about them. . . Nevertheless . . . the subject of the report's right to access is not absolute. The identity of any person who made the report or who cooperated with the subsequent investigation may be withheld when . . . such information is "likely to be detrimental to the safety or interests of such person." The withholding of information is not to be automatic, but must be based on the individual facts of each case.

The National Advisory Committee concluded that the latter view, on balance, best protects the rights, interests, and safety of all the individuals involved, and that the family court is the appropriate forum for decisions to withhold information.

Paragraphs (c)-(e) call for access by individuals, agencies, and courts when such access is "essential" to investigating or adjudicating child abuse reports, complaints, and petitions, or providing treatment and services to the juveniles and families named in those reports, complaints, or petitions. *See* IJA/ABA, *Neglect, supra; Proposed Model Child Protection Act, supra.* In family court proceedings, such records would be handled in the same manner as any other identifiable information. *But cf. Proposed Model Child Protection Act, supra;* and 45 C.F.R. 1340.3-3(5) (1976). Included among those persons to whom the maintaining agency may disclose child abuse reports or records is a physician diagnosing or treating the injuries allegedly resulting from abuse. *See* 45 C.F.R. §1340 .3-3(5), *supra; Proposed Model Child Protection Act, supra; but see,* A. Schuchter, *Child Abuse Intervention: A Presciptive Package,* 38 (1976).

In addition, the standard urges that agencies receiving and investigating reports of child abuse be authorized to furnish to persons required by law to report instances of abuse coming to their attention, a summary of the actions taken as a result of any reports which they have made. To reduce administrative costs and unnecessary dissemination of identifiable information, such summaries should be provided only upon request. It is anticipated that this will help to encourage accurate reporting by providing verification of the diagnosis and feedback on the care and services provided to the child and family. *See Model Child Protection Act, supra.*

Stringent penalties should be provided for unauthorized disclosure of child abuse records. These should apply to individuals other than the subjects of the records, who violate the statutory provisions governing confidentiality of identifiable information pertaining to juveniles after having access to child abuse records.

Related Standards

1.51 Security and Privacy of Records
1.52 Collection and Retention of Records
1.53 Confidentiality of Records
1.531 Access to Police Records
1.532 Access to Court Records
1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.55 Accuracy of Records
2.13 Intervention to Protect Against Harm
2.21 Authority to Intervene
3.113 Jurisdiction Over Neglect and Abuse
3.146 Intake Investigation

1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies

Access to records maintained under Standard 1.52 should not be granted to individuals or agencies for the purpose of conducting a research, evaluative, or statistical study unless an application is filed with the court or agency maintaining the record, which describes:

a. The purpose of the study;
b. The qualifications of the individuals conducting the study;
c. The identifiable information sought and the reasons why the purpose of the study cannot be achieved without using information in identifiable form;
d. The methods to be used to assure that the anonymity of the subject of the records is preserved; and
e. The methods to be used to assure that the information will be physically secure.

Decisions approving or disapproving applications for access should be in writing and should be subject to review.

Identifiable information collected for research, evaluative, or statistical studies should be immune from legal process and should not be used for any purpose in any judicial, legislative, or administrative proceeding without the informed written consent of the person to whom the information pertains.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standard 5.6 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; and *Regulations on Confidentiality of Identifiable Research and Statistical Information*, 28 C.F.R. Part 22 (December 15, 1976).

Commentary

Research, evaluative and statistical studies, in addition to their critical role in advancing knowledge, are increasingly being called upon to assist in the management and assessment of juvenile service system agencies and programs, and in the monitoring of recordkeeping practices. *See* Standards 1.31, 1.32, and 1.51. This standard sets forth procedures governing disclosure to researchers and evaluators of identifiable information pertaining to juveniles maintained by courts and agencies pursuant to the principles set forth in Standard 1.52. It requires individuals or agencies seeking access to identifiable information for research purposes to submit a detailed application. This follows the procedure recommended in IJA/ABA, *Information Systems, supra,* and is comparable to the privacy certificate required to be submitted for research sponsored under the Crime Control Act, Pub. L. 93-83, [codified at 42 U.S.C.A. §3701 *et.seq.* (Supp. 1976)]; *see Regulations on Confidentiality of Identifiable Research and Statistical Information,* 28 C.F.R. §22.23 (1976). It should be noted however, that under 45 C.F.R. §99.31 (a)(6)(1976), educational records cannot be disclosed to researchers without the written consent of the juvenile's parent unless the research is intended to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction.

The standard provides that the application should be sent to the maintaining agency. The provision approved by the IJA/ABA, *Information Systems, supra* requires a copy of such applications to be sent to the Privacy Council as an extra safeguard. Given the broad scope of the Privacy Council's responsibilities, under Standard 1.51, this seems like an unproductive and time-consuming alternative. However, a log of disclosures should be maintained to assist the Privacy Council and others monitor recordkeeping practices. *See* Standard 1.51

Paragraph (a) requires that the application describe the purpose of the study. This, like the other proposed requirements, is not intended as a curb on academic freedom. It is simply meant to assure that the study has "a valid educational, scientific or public purpose," IJA/ABA, *Information System, supra* at Standard 5.6(B)(2), and that it is not intended to cause legal, economic, social, or physical harm to the persons whose identity is revealed. *See* 28 C.F.R. §22.26(b).

Paragraph (b) is intended to assure that only individuals with the level of training and experience necessary to conduct the proposed study and to assume responsibility for the protection and proper use of identifiable records are granted access to such records. *See* IJA/ABA, *Information Systems, supra.*

The explanation of why the study could not be conducted

without identifiable information required in paragraph (c) is the most important section of the application. As in the other access provisions, disclosure should only be made to researchers when essential to achieving the purpose of the research, evaluative, or statistical study. If those purposes can be achieved by using information from which the identities have been stripped, the required information should be turned over in nonidentifiable form. *See* 28 C.F.R. §22.26(b).

Among the methods which may be used by researchers in preserving the anonymity of the subject of identifiable records pursuant to paragraph (d) are:

- Omitting any data from research findings and reports which is labeled by name or other personal identification or which by virtue of sample size or others factors can be reasonably interpreted as referring to a particular private person;
- Providing identifiable data to project officials, employees, and subcontractors only when disclosure is essential to accomplishing the research, evaluation, or statistical purposes of the project;
- Requiring execution of a transfer agreement between the researcher and the recipient of the information before secondary disclosure is made to nonmembers of the project staff;
- Requiring a detailed justification for transfer of identifiable information to a nonmember of the project staff or to the sponsoring agency. *See* 28 C.F.R. §22.23, 22.24, and 22.26.

Paragraph (e) requires applicants to indicate how the identifiable information will be protected against theft, fire, flood, and other national disasters.

Like other administrative decisions, approvals or disapprovals of applications for access to records pertaining to juveniles should be subject to administrative and ultimately, judicial review. The standard goes further than the provision proposed by the IJA/ABA, *Information Systems, supra,* by recommending that approval as well as disapproval of an application should be subject to review at the request of a third party—e.g., the subject of an identifiable record or the Privacy Council.

The final paragraph of the standard recommends that identifiable information collected during the course of a research, evaluative, or statistical study should be immune from subpoena or introduction as evidence in a judicial or administrative proceeding unless the consent of the subject of the information has been obtained. This follows §524(a) of the Crime Control Act of 1973 (Pub. Law 93-83) and the regulations proposed pursuant thereto. 28 C.F.R. §22 *et.seq.; see also* National Academy of Sciences, *Protecting Individual Privacy in Evaluation Research* 7 (1975); and P. Nejelski and H. Peyser, *A Researcher's Shield Statute: Guarding Against the Compulsory Disclosure of Research Data* (1974). The recommendation primarily addresses information collected directly from the individuals named in the records rather than the records themselves. The need for such immunity was forcefully outlined in the National Academy of Sciences report, *supra:*

> . . . Some kind of legal protection of research must be considered, to guarantee that respondents who give information about themselves to researchers . . . need not fear that the information will be revealed to their detriment in a court or to an investigative body. Without such protection, it will become more and more difficult to obtain the information needed for valid evaluation of the effects of government programs.

Identifiable information obtained for research, evaluative, or statistical purposes is excepted from the provisions on destruction of records outlined in Standard 1.56, so as to permit longitudinal and other long-term research studies as well as after-the-fact assessments. However, this exception is not intended to exempt individuals from the strong civil or criminal penalties which should apply to unauthorized disclosure of identifiable information pertaining to juveniles. 28 C.F.R. §22.29; and Crime Control Act at §524. In addition, the maintaining agency should terminate access rights whenever it determines that the study or any member of the staff thereof has violated the terms of the application or the rules and regulations regarding access.

Related Standards

1.31	Development of an Evaluation System
1.32	Development of a Research Capability
1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody and Dispositional Records
1.534	Access to Child Abuse Records
1.56	Destruction of Records

1.54 Completeness of Records

Procedures should be developed to assure the completeness of records maintained pursuant to Standard 1.52.

Included in those procedures should be provisions requiring:

a. That written notice of the disposition or dismissal of a delinquency, noncriminal misbehavior, or neglect and abuse complaint or petition be sent within 30 days to law enforcement, protective services, supervision, and other public agencies or programs involved in the investigation of the report complaint or petition, in the taking into custody, detention or custody of the juvenile, or in the supervision of the juvenile and/or family, and

b. That the information contained in the notice be entered within 15 days of its receipt on any identifiable records pertaining to the juvenile which are maintained by such agencies.

Sources:

See generally 28 C.F.R. §20.21(a) (1976); Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information*, §§17.1(b) and (c) (1975); Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standard 15.3(b) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

In order to minimize the risk of misinterpretation, records should be kept as accurate and complete as possible. This standard, together with Standard 1.55, urges agencies maintaining identifiable records pertaining to juveniles to institute procedures which will facilitate identification and correction of information which may be erroneous at the time of collection or which has become inaccurate or incomplete with the passage of time.

This provision specifically addresses the problem of law enforcement and other records which note that a juvenile has been taken into custody but not the disposition which resulted. Paragraph (a) recommends that notice of a disposition or dismissal or of a delinquency, noncriminal misbehavior, or neglect and abuse petition or complaint, be sent to the agencies involved in taking a juvenile into custody, referring him/her to the intake unit, or investigating a report of child abuse; to the intake unit; and to the agencies responsible for detention, custody, or supervision of the juvenile and/or family. The terms "disposition" and "dismissal" include failure to file a complaint following intervention or following investigation of report of child abuse; dismissal of a complaint by the intake unit with or without referral to services; dismissal of a complaint by the prosecutor because it is legally insufficient; dismissal of a petition by the prosecutor or the family court prior to adjudication; issuance of a dispositional order following adjudication; and dismissal of a petition following appeal. The standard requires that the notice be sent no more than thirty days after the dismissal or dispositional order is final, and that the record be corrected no more than fifteen days after the notice has been received. The Regulations on Criminal Justice Information Systems, 28 C.F.R. §20.21(a)(1) provide a ninty-day notification period. The shorter ninty-day period was selected in order to be consistent with the strict time limits recommended throughout these standards. *See* Standard 3.161.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.55	Accuracy of Records
2.221	Criteria for Referral to Intake—Delinquency
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior
2.223	Criteria for Referral to Intake—Neglect and Abuse
2.234	Form of Citation, Summons, and Order to Take into Custody
2.241	Procedures Following a Decision Not to Refer to Intake
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior
2.341	Procedures Following a Decision Not to Refer to Intake
3.141	Organization of Intake Units
3.142	Review of Complaints
3.163	Decision to File a Petition
3.164	Petition and Summons
3.165	Determination of Probable Cause
3.188	Dispositional Hearings
3.191	Right to Appeal
4.11	Role of the State

1.55 Accuracy of Records

Procedures should be developed to assure the accuracy of records maintained under Section 1.52.

Included in those procedures should be provisions which permit the subject of an identifiable record to challenge its accuracy or completeness, and which provide for administrative and judicial review of a refusal by the maintaining agency to correct or destroy challenged information.

Sources:

See generally 28 C.F.R. §§20.21(a) and (g) (1975); Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* §§14.1(1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 2.6(A) and (B), 16.1, and 21.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems.*.

Commentary

This standard calls upon all courts and agencies maintaining identifiable records pertaining to juveniles to establish procedures for assuring that those records are accurate. These procedure should include data collection, entry, storage, and auditing methods which "will minimize the possibility of recording and storing inaccurate information and which require that upon the detection of "inaccurate information of a material nature," all individuals, courts agencies known to have received that information will be notified of it. *Regulations on Criminal Justice Information Systems,* 28 C.F.R. §20.21(a)(2); *see also* Standards 1.54 and 1.56. They should also include the right of the subject of a record to inspect it and challenge both its accuracy and the authority of the agency to maintain it. *See* Standards 1.52, and 1.531-1.534. This is in accord with the recommendations in the source materials as well as the Federal Privacy Act of 1974, 5 U.S.C.A. §552a(d) (Supp. 1976) and other recent federal legislation. *See, e.g.,* Family Educational Privacy Act of 1974, 20 U.S.C.A. §1232g(a)(2); and Fair Credit Reporting Act, 15 U.S.C.A. §1681i; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 28.1 (1976).

Written rules should be issued governing inspection of and challenges to records. These rules should be well publicized. They might include reasonable requirements for verifying the identity of the person requesting access, prohibitions on access to investigative and intelligence information, *see* Standard 1.531, and appropriate limitations on access to information which could be considered harmful under Standards 1.533 and 1.534. There should also be provisions for administrative appeals of decisions not to correct or destroy a record, as well as judicial review for those few cases in which the administrative review process is unable to resolve the differences between the subject of the record and the maintaining agency. *See* Standards 1.54, 1.56; and 3.2; and Search Group, Inc., *supra.*

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.56	Destruction of Records
3.147	Notice of Decision
3.156	Review of the Conditions of Release
3.167	Discovery
3.187	Predisposition Reports
3.2	Noncourt Adjudicatory Proceedings

1.56 Destruction of Records

The destruction of a record should be mandatory and should not be contingent upon receipt of a request by the subject of that record.

Records retained under Standard 1.52 which result from the investigation, initiation, processing, and disposition of a delinquency complaint or petition, should be destroyed no more than five years after the date on which they were created unless:

a. The allegations in the petition are proven beyond a reasonable doubt, in which case the records should be destroyed no more than five years after termination of the disposition imposed; or
b. An adjudication is held at which the state fails to prove the allegations in the petition beyond a reasonable doubt, in which case the records should be destroyed immediately.

Records retained under Standard 1.52 which result from the investigation, initiation, processing, or disposition of a criminal misbehavior complaint or petition, should be destroyed no more than five years after the date on which they were created or at the time the juvenile named in those records attains the statutory age of majority, whichever occurs first, unless an adjudication hearing is held at which the state fails to prove the allegations in the petition beyond a reasonable doubt, in which case the records should be destroyed immediately.

Prior to destroying a record, the maintaining agency should advise the subject of the record that the record is being destroyed and that the subject and his/her family may inform any person or organization that with regard to the proceedings from which the record resulted, they were not arrested, held in custody, named in a complaint or petition adjudicated, or subject to a dispositional order of the family court.

Notice of destruction of a record should also be sent to all persons, courts, agencies, and programs which may have copies of or notations regarding such records. Persons, courts, agencies and programs, receiving such a notice should promptly destroy all copies of the record or portion or notations thereof contained in their files, unless the information was obtained for research, evaluative, or statistical purposes pursuant to Standard 1.535.

Source:

See generally Institute of Judicial Administrative/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 17.1, 17.5, 17.6, and 17.7(A) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

While accurate and complete records are necessary for the effective operation of the juvenile service system, such records can also result in a lifelong stigma because of youthful mistakes in judgment.

Many job opportunities, or governmental agencies, are explicitly forclosed to those with juvenile records. A record involving a delinquency also can preclude membership in labor unions or apprentice programs, or licensing for regulated occupations. The difficulties in finding employment are rampant even in unskilled labor jobs and increase with the level of skill required. Moreover, a juvenile with a record often is prevented from obtaining the education or training necessary to make gainful employment possible.

These disabilities are not the most devastating results of juvenile records; indirect economic and social effects resulting from adverse public sentiments rarely distinguished between a person merely arrested and then released and a person actually adjudicated a delinquent, for example. National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice Standards and Goals,* 782 (1976) [hereinafter cited as *Report of the Task Force*].

Recognizing that the vast majority of juveniles who commit a delinquent offense do not pursue criminal careers, most sets of standards, model legislation, and many state codes provide for either sealing or destroying identifiable records pertaining to juveniles after a specified period of time has elapsed following termination of supervision. *See, e.g.,* IJA/ABA, *Information Systems, supra; Report of the Task Force, supra;* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 3.4(B) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; U.S. Department of Health, Education and Welfare, the *Proposed Model Child Protection Act,* §21(F) (draft, 1977); Uniform Juvenile Court Act, §57 (1968); *Model Act for Family Courts,* §48 (1975); and 18 U.S.C.A. §5038 (Supp. 1976); *see also* the Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* §18.4 (1975); and National Advisory Committee on Criminal Justice Standards

and Goals, *Criminal Justice System*, §7.5 (1973) [hereinafter cited as *Criminal Justice System*].

Those groups favoring sealing of records—i.e., removing the records from a routinely available status to a status requiring special procedures for access. Search Group Inc., *supra* at §18.2, argue that destruction of the records imposes an unnecessary impediment to long-term and retrospective research studies essential for determining the characteristics of delinquency and the factors contributing to the development of criminal careers; and makes it possible for individuals to prove, subsequent to the date of destruction, that they were acquitted, that the former charges were dismissed, or that rumors regarding past deliquent conduct are false or exaggerated. *See Report of the Task Force, supra.* On the other hand, it is argued that sealing records, in practice, is ineffective except as a way in which the maintaining agency can exclude those whom it does not wish to see the records from gaining access, and that the advantages of freeing persons from the burden of a record of youthful misconduct outweigh the relatively rare instances in which the record would be needed for research or exoneration. *See generally* IJA/ABA, *Information Systems, supra.*

While recommending that records be destroyed rather than sealed, the National Advisory Committee has sought to answer the problems which have been raised as well as the need of courts and corrections agencies for information about the acts of delinquency committed by young adults while they were under age eighteen. *See* Standard 3.114.

Standard 1.56 recommends that with two exceptions, records resulting from the investigation, arrest, summoning, intake, detention, or charging of a youth alleged to have committed a delinquent act should be destroyed automatically within five years of their creation. Because of the need to provide some period beyond the termination of a dispositional order before a record is destroyed, premising destruction upon the application of the subject of a record is unlikely to be effective. The five-year maintenance period is based on the conclusion of the National Advisory Committee that the records arising from an adjudication of delinquency are of little relevance if the subject of those records has stayed out of trouble for five years, and that even in those instances in which the individual commits another offense during the maintenance period, information which is over five years old will be of only peripheral value. The recommendations of other groups vary regarding the time and other limits which should apply to expungement or sealing of records. *Cf.* IJA/ABA, *Information Systems, supra* at Standard 17.3 (destruction two years after discharge if no charge is pending); *Uniform Juvenile Court Act* (sealing two years after discharge if the child is rehabilitated and moral turpitude was not involved); *Model Act for Family Courts* (five years unless another charge is pending); *Proposed Model Child Protection Act* (stripping of identifiers five years following submission of a child abuse report unless there has been a new report involving the family); IJA/ABA, *Neglect, supra* (stripping seven years after the original report); Search Group, Inc., *supra* (sealing or purging of records seven years after conviction of an adult for a felony, five years after conviction for a misdemeanor); *Criminal Justice System, supra* (expungement ten years after a felony conviction, five years after a misdemeanor conviction).

The first exception to the proposed five-year rule is when the juvenile has been adjudged delinquent as the result of an admission or the state having sustained its burden of proof at an adjudication hearing. In such instances, destruction of the records concerning the case should be delayed for up to five years after the expiration of the dispositional order. The second exception is when the state fails to sustain its burden of proof at the dispositional hearing. In such cases the records should be destroyed immediately.

In noncriminal misbehavior cases, the standard provides that unless the family court finds that the state has failed to sustain its burden of proof, records resulting from the investigation, arrest, summoning, intake, detention, or charging of a youth or parent should be destroyed five years after their creation or when the juvenile reaches the age of majority specified by statute, whichever occurs first. As in delinquency cases, when a noncriminal misbehavior petition is dismissed for lack of proof at the adjudicatory stage of the proceedings, the records should be destroyed at once.

No provision is made for immediate destruction of records when the arrest of a juvenile or the filing of a delinquency or noncriminal misbehavior petition or complaint does not result in an adjudication hearing, in order not to discourage referral of the juvenile to services and dismissal of the complaint at the intake stage of the proceedings. *See* Standards 3.142-3.144; *but see, e.g.,* Search Group, Inc., *supra;* IJA/ABA, *Information Systems, supra* at Standard 17.2(A) and (B); and *Model Act for Family Courts.* The standard requires that prior to destruction, a notice should be sent to the person to whom it pertains. This is to assure that the subject of a record has an opportunity to obtain a copy so that he/she will later be able to prove what he/she did or did not do, or the results of any evaluations or diagnoses documented in dispositional records. *See* IJA/ABA, *Information Systems, supra* at Standard 17.6.

Following the position adopted by the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, the standard urges that the subject of a record and his/her family should be entitled to deny that any of the matters to which the record refers, ever occurred. As noted in the commentary to the Task Force provision, this is not intended as a pardon. Rather, it is designed to allow the errors of youth to be forgotten and to avoid hindering a person's ability to find a job and become a productive member of society. *Cf.* IJA/ABA, *Information Systems, supra* at Standards 17.6(B) and 17.7(B).

Finally, the standard provides for notifying persons, courts, and agencies which have had access to a particular record in accordance with Standards 1.531-1.535, that the record has been destroyed and that they are obligated to destroy any copies or references to it contained in their files. An exception is made, however, for identifiable information obtained for research, evaluative, and statistical purposes under Standard 1.535. As noted above, this exception is to permit longitudinal and other long-term research studies as well as after-the-fact assessments. In making this limited exception, the National Advisory Committee recognized that based on past

experience, it is highly unlikely that identifiable information collected for research purposes would be misused to harm the subject of that information. However, this provision is not intended to exempt persons who have obtained information obtained under Standard 1.535 from the strong civil and criminal sanctions which should apply to unauthorized disclosure of identifiable information pertaining to juveniles.

Related Standards

1.51 Security and Privacy of Records
1.52 Collection and Retention of Records
1.53 Confidentiality of Records
1.531 Access to Police Records
1.532 Access to Court Records
1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.535 Access for the Purpose of Conducting Research Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records

APPENDIX E

SOUTH CAROLINA - ACT 361

(R383, H1809)

No. 361

An Act To Provide That The Record Of Any Person Charged With A Criminal Offense Be Destroyed Upon A Finding That Such Person Is Not Guilty.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. When records to be destroyed.—Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law enforcement agency.

SECTION 2. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 22nd day of June, 1973.

APPENDIX F

SOUTH CAROLINA DEPARTMENT OF YOUTH SERVICES

Record Series Retention/Disposition Schedule

DO NOT WRITE IN THIS SPACE
SCHEDULE NUMBER
YS-AS-1-R

RECORD SERIES RETENTI POSITION SCHEDULE

1. Agency

South Carolina Department of Youth Service.

2a. Division
All Schools (Excluding Reception and Evalua
and Youth Bureau Files)

b. Subdivision

3. Title of Record Series:

Individual Student Case Files

4. Description of Records: This series is used to maintain pertinent information relating to each student admitted to the various schools of the Department of Youth Services. These records deal with the medical, educational, personal, and legal aspects of the student. Information contained in this series includes legal documents such as Court Orders, Commitment Letters and Affidavits; Fact Sheets or Personal and Family Data Sheets which list personal data; and Medical Reports and Birth Certificates. In addition, these files consist of Educational Reports such as Report Cards, Educational Tests, Teacher Rating Sheets, Progress Reports, and Diagnostic Evaluation or Treatment Plan Excerpts; and Parole Letters, Statements of Release or Date of Release or Discharge forms. Also listed in this series are Canteen Expenses, Petitions for Parole, discipline slips, Psychologist's Report, Social Worker's Report, Procedure Check List, Special Data Sheet, Community and School Report, and related correspondence.

5. (a) Retention Schedule: Retain the student's file in the respective school until student is released or otherwise not under the jurisdiction of Youth Services, then transfer to the central inactive student file. Break inactive file at the end of each calendar year. Retain in the inactive file for five years and until the student becomes eighteen years old, then screen and destroy all documents except the following, which must be microfilmed when present, Court Order or Commitment Letters, (See Item #9 over)

(b) Restrictions: Restricted to use by agency personnel.

6. Justification: These records are needed for long term educational and medical reference and should be retained for an extended period of time. After the retention period in 5(a) above, this series will no longer have administrative value and should be destroyed. This schedule supersedes Record Series Retention/Disposition Schedule YS-AS-1, Individual Student Case Files, approved by the State Budget and Control Board on April 26, 1978.

7. CERTIFICATE OF AGENCY REPRESENTATIVE

I certify that I am authorized to act for the head of this agency in the disposition of non-current records and the records series schedule is for records of no further administrative, fiscal or legal value to this agency after the expiration of the period indicated in item 5 (a) above.

9-29-78
DATE

A. D. Gillacher Jr.
AGENCY REPRESENTATIVE

Executive Assistant to State Board
OFFICIAL TITLE

SRM-2 (Rev 72)

APPROVAL

The Record Series Retention/Disposition Schedule listed on the front of this form is approved. At the authorized date for the disposition of the record series, either by destruction or transfer to the Department of Archives and History, the agency to whom the records belong and the Department of Archives and History will be notified by the State Records Center. If the agency or the Department of Archives and History find it necessary to retain these records in the State Records Center beyond the scheduled disposition period or determine that they are of permanent value, they shall notify the Director of the Department of Archives and History and the schedule shall be modified accordingly. Records schedules not requiring destruction need only be approved by the agency concerned and the Department of Archives and History.

DATE	DIRECTOR, DEPARTMENT OF ARCHIVES AND HISTORY
DATE	STATE BUDGET AND CONTROL BOARD
	OFFICIAL TITLE

9. Remarks:

Cont'd item 5(a):
Affidavits, Medical Record Form Concerning History and Medical Examinations, psychiatric examination, hospital records, Parole Letters or Statement of Release, and Educational transcripts. Microfilm and create two microfilm copies. Retain the positive or direct negative in the agency for reference purposes and transfer the master negative to the Department of Archives and History for deposit as the agency's security copy. After the microfilm copy has been certified by the agency as true and correct, the hardcopy record may be destroyed. After eighty years from date of filming, both copies of microfilm may be destroyed at the discretion of the agency. All copies of film must meet the standards prescribed by the Public Records Act of 1973.

10. Verification of Approval

DO NOT WRITE IN THIS SPACE
SCHEDULE NUMBER
YS-YBS-6

RECORD SERIES RETENTION/DISPOSITION SCHEDULE

1. Agency

South Carolina Department of Youth Services

2a. Division

Youth Bureau Services

b. Subdivision

3. Title of Record Series:

Youth Bureau Individual Case Files (Active and Inactive)

4. Description of Records: This series is used to maintain pertinent information relating to each student who receives counseling from the Youth Bureau. This series consists of Individual Case Files which consist of Psychological Evaluation, Psychological Services Report, Personal Data Form, Family Data Form, Referral For Services Form, Letter of Admittance For Evaluation By Youth Services, Discharge Form, Inactive Status Request, Confidential Summary, Parental Consent Agreement, Client Daily Record, Educational Assessment, and Family Court Petition.

5. (a) Retention Schedule: Retain in the active file until individual is no longer receiving counseling, then transfer to the inactive file. Break inactive file at the end of each calendar year. Retain in the agency one additional year. Transfer to the State Records Center, hold there for five years, then destroy.

(b) Restrictions: Access to this series is restricted to authorized personnel only.

6. Justification: The retention period in 5(a) above exceeds the record retention requirement of the Federal Register Volume 42, 45829, September 12, 1977, to be retained for a period of three years, in effect as of August 11, 1978. Information concerning Youth Bureau Services is summarized in the agency's Annual Report, which is being retained permanently by the Department of Archives and History.

7. CERTIFICATE OF AGENCY REPRESENTATIVE

I certify that I am authorized to act for the head of this agency in the disposition of non-current records and the records series schedule is for records of no further administrative, fiscal or legal value to this agency after the expiration of the period indicated in Item 5 (a) above.

9/29/78
DATE

A. D. Tollison, Jr.
AGENCY REPRESENTATIVE

Executive Assistant & State Director
OFFICIAL TITLE

SRM-2 (Rev 72)

8. APPROVAL

The Record Series Retention/Disposition Schedule listed on the front of this form is approved. At the authorized date for the disposition of the record series, either by destruction or transfer to the Department of Archives and History, the agency to whom the records belong and the Department of Archives and History will be notified by the State Records Center. If the agency or the Department of Archives and History find it necessary to retain these records in the State Records Center beyond the scheduled disposition period or determine that they are of permanent value, they shall notify the Director of the Department of Archives and History and the schedule shall be modified accordingly. Records schedules not requiring destruction need only be approved by the agency concerned and the Department of Archives and History.

DATE	DIRECTOR, DEPARTMENT OF ARCHIVES AND HISTORY
DATE	STATE BUDGET AND CONTROL BOARD
	OFFICIAL TITLE

9. Remarks:

10. Verification of Approval

House: Crow, Gulledge
Attorney: Bryan
Stenographer: LeTempt
Date: 3-5-79
No.: 5

died - 1980

H. 2619 A BILL

TO AMEND SECTION 17-1-40, CODE OF LAWS OF SOUTH CAROLINA, 1976, WHICH PROVIDES THAT CRIMINAL RECORDS SHALL BE DESTROYED WHEN A PERSON IS FOUND INNOCENT OR THE CHARGES ARE DISMISSED, SO AS TO PROVIDE THAT THE RECORDS SHALL BE RETAINED IF PREVIOUS CONVICTION RECORDS ARE ON FILE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 17-1-40 of the 1976 Code is amended to read:

"Section 17-1-40. If any person is charged with a criminal offense which is discharged, dismissed, or nol-prossed or if the person is found not guilty, acquitted, or pardoned of the charge, the arrest report, booking report, photographs and fingerprint cards pertaining to the charge shall be destroyed if the person has no other conviction data on file at any municipal, county or state law enforcement agency. If the person has previous conviction data and the same circumstances prevail the records shall be retained but shall not be disseminated to anyone other than a court or law enforcement agency."

SECTION 2. This act shall take effect upon approval by the Governor.